

No. 2679

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Plaintiffs in Error,

VS.

H. M. FAGERBERG,

Defendant in Error.

VOLUME II.
(Pages 225 to 455, Inclusive.)

Upon Writ of Error to the United States District Court of the
Territory of Alaska, Fourth Division.

Filed

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Territory of Alaska, Fourth Division.

(Testimony of J. A. Fagerberg.)

Q. You gave the ad to Wulff? A. Yes, sir.

Q. And did you tell him how to put the ad in?

A. No, sir.

Q. Just told him to put the ad in?

A. Just told him to put the ad in. I met him on the street, in front of the Valdez Cafe, I think—that is my recollection of it.

Q. You didn't write the ad?

A. I didn't write the ad.—Charley wrote the ad. himself. [204—187]

Q. You told him he could put an ad in?

A. I told him he could put an ad, in, yes, sir.

Q. And you didn't know what was going in it?

A. No.

Q. Did you read the ad in the paper from time to time? A. Yes.

Q. It probably had some reference to freighting?

A. No.

Q. A reference to general merchandizing?

A. Yes, general merchandise at Chititu.

Q. You had letterheads printed at one time, Fagerberg Brothers?

A. No, we never had a letterhead printed.

Q. You had billheads?

A. In 1910 Harry said he had run out of the old Nizina billheads and he said, "Better send for some billheads," and I had some billheads printed; and the way that came out Fagerberg Brothers, I met Johnson in Seattle and a man connected with the stationery company and told them to get me out several thousand billheads, blank form; I picked out the form and there was nothing said about the heading

(Testimony of J. A. Fagerberg.)

and they knew me from schooldays and knew Harry was with me and they just put it in Fagerberg Brothers.

Q. You didn't tell him to put it in Fagerberg Brothers, General Merchandise, Nizina, Alaska?

A. He asked me what I was doing up there and I said, "This is for a general merchandise store, miners' supplies."

Q. Did you make out the bills against the Victor Olsen estate which figured in the action brought by Victor Olsen against the Katalla Company?

A. I don't think I made out the bills for that—I made out the bills to Victor Olsen, yes. [205—188]

Q. To refresh your recollection, didn't you give to Mr. W. T. Love, who was attorney for Victor Olsen when the case was started, bills covering two or three pages, or three or four pages, giving the items furnished to Victor Olsen and they were on the Nizina letterheads of Fagerberg Brothers?

Mr. DONOHOE.—We object—if the attorney had the billheads he should show them.

A. I have no recollection of that. I don't ever remember talking to Mr. Love on the Victor Olsen deal. Mr. Donohoe was handling that and I think when I was talking to you in Cordova one spring that I told you—I was asking you about the Victor Olsen deal and you gave me certain statements, you had sent the check outside, etc., and I referred you to Mr. Donohoe in regard to the matter and Mr. Donohoe has the notes to this day on the Olsen estate.

Q. That was in the spring of 1912?

A. No, I think it was in the spring of 1911, if I

(Testimony of J. A. Fagerberg.)

am not mistaken; I was talking to you in Cordova in regard to that—my impression is that Harry was here at that time.

Q. I believe you stated that you don't remember whether the statement of account that you furnished to W. T. Love for the action was on your billheads or Fagerberg Brothers.

A. I don't remember ever giving Mr. Love any statements.

Q. Perhaps you gave them to Mr. Cappell to turn them over to Mr. Love?

A. No, I never gave them to Mr. Cappell—I don't think there was any statement issued to any of the attorneys.

Q. Now, Mr. Wilt turned up there last July?

A. Yes, sir.

Q. Mr. C. F. Wilt, the attorney for the Carstens Packing Co.? A. Yes, sir. [206—189]

Q. He came there to try to get some kind of a settlement or arrangement or understanding?

A. Yes, sir.

Q. What did he want?

A. He wanted several things—he wanted an adjustment of the thing; the row between I and the Carstens Packing Company was on the old Nizina stock and in the argument, why I offered to pay him \$4,000 and he was to get his money out of the Chititu stock, according to the agreement I and Brown had come to on that, and then I told him, if he wanted the Nizina store, he could have it and I would get Harry to turn it back and I would stay out of it—I said, “I will get you your \$4,000.”

(Testimony of J. A. Fagerberg.)

Q. Wasn't one issue between you and Mr. Wilt, representing the Carstens Packing Company due to the fact that you were selling goods pretty readily, as you state, at the rate of one thousand dollars per month and was making no remittances either to the Carstens or the other creditors?

A. The other creditors were being paid all the time.

Q. How much did you pay to the other creditors from April to July?

A. The other creditors were getting their money right along—most of the goods came there and the freight and goods were shipped C. O. D.

Q. The new goods came C. O. D. and you were taking up the bills out of the proceeds?

A. Yes, sir.

Q. And at the time Wilt left there you had very little money on hand?

A. At the time Wilt left there I had very little money on hand.

Q. It had all been used up in C. O. D. shipments.

A. It had all been used up in C. O. D. shipments.

[207—190]

Q. As the result of that, Mr. Wilt agreed finally to put Mrs. Cole in charge of the Chititu store?

A. We never agreed to do anything of the kind, between I and Wilt.

Q. How did she happen to go there?

A. I put Brown in there and I put Mrs. Cole in charge—she was already there before Wilt came.

Q. She had been there how long?

(Testimony of J. A. Fagerberg.)

A. I couldn't say exactly, some time in May she went over there—I couldn't say exactly when.

Q. She kept the store open?

A. Yes, sir, she kept the store open.

Q. You furnished her a lot of new goods from the Blackburn store?

A. Not a great sight—there was about \$3,500. I seldom figured on doing any packing of staple stuff between Blackburn and Nizina for the Chititu store, except a few extras.

Q. Did any of the goods that were sent to you by Carstens go into the Nizina store?

A. The whole stock that was in there was Carstens.

Q. The whole shipment went to Nizina practically? A. Yes, sir.

Q. Some of it was kept in the Blackburn store.

A. Very little of it.

Q. The stuff you had in the Blackburn house was what you bought from other parties?

A. Except the first shipment I got from Carstens—that came from Seattle.

Q. The stuff went into the Nizina store as fast as it was shipped up?

A. It went there all in one shipment.

Q. In what month? [208—191]

A. It landed there some time about the first of May.

Q. The first of May a year ago? A. Yes.

Q. When Mr. Wilt left there, had you come to any understanding as to what you were going to do about

(Testimony of J. A. Fagerberg.)

this indebtedness to the Carstens Packing Co.?

A. Wilt made a promise or I agreed with Mr. Wilt that they were simply to step out of the old Nizina store and release me and I was to get out. I said, "Give me a little time and I will give you a bill of sale for the Chititu store," and we agreed on that, and then he came out and jumped on me in the complaint, professional style.

Q. All the money you got from the sale of goods and also from freighting between March and August went into the purchase of new goods from the outside? A. Yes, sir.

Q. That was the reason you were unable to remit anything to Mr. Carstens or pay the wages?

A. Yes, sir.

Q. Your schedule in bankruptcy shows that you owed several hundred dollars to Harry and several hundred I believe to Rudolph Henderson and two or three hundred dollars to Mrs. Damon who was helping to run the roadhouse? A. Yes, sir.

Q. They were all getting \$100 per month?

A. Yes, sir.

Q. And you had paid no wages to any of them?

A. I had paid no wages to any of them.

Q. Because you didn't have money to do it with?

A. Yes, sir. [209—192]

(Questions by the Court.)

Q. Did you keep any books during this time, in 1914? A. I just kept a memorandum.

Q. Is that memorandum available—have you it

(Testimony of J. A. Fagerberg.)

here? A. I think part of it is here.

Q. Does it show what you paid creditors?

A. I have all the bills.

Q. Have you got them here?

A. Yes, I think I have.

(Questions by Mr. Ritchie.)

Q. If you can, produce the bills—state what you paid—you stated most of it was taken up by C. O. D. drafts? A. Yes, sir.

Q. Can you state from memory what those amounted to?

A. No, I could not; it would be pretty hard.

Q. Have you receipts for drafts you took up, showing a large part of it? A. Yes, I have.

Q. Try to get them—this is something I have been trying to get at, how much you paid out during those months, from the time you returned until the attachment on the first of August—could you arrive off-hand at the approximate amount?

A. No, I wouldn't even attempt to get at it.

Q. Could you get them in five minutes? Are they in Mr. Donohoe's office?

A. No, sir, they are not.

Mr. RITCHIE.—We will pass that with the understanding that they will come in later, as part of his examination, cross-examination, and he can produce them to-morrow morning.

The WITNESS.—I will produce them to-morrow morning. [210—193]

Q. You say the Marshal attached a lot of coffee up on the trail somewhere?

(Testimony of J. A. Fagerberg.)

A. That was attached in the Shushana.

Q. By whom, by Frank Hoffman?

A. I suppose so—he is the officer in charge in there.

By the COURT.—What became of this stock of goods that was attached, has it been sold?

Mr. DIMOND.—All at Blackburn, I believe, has been sold—I don't know whether the rest of it has been sold or not.

The WITNESS.—The oats has been sold and I think the coffee; the oats are at the mouth of the Chetistone.

Q. How about the Shushana stuff—was there anything besides coffee in there?

A. There was a few sacks of oats in there; they were damaged, they got wet—I couldn't say about the oats, whether it was sold or not, but I know the coffee has been sold.

Q. I believe you testified that the value of the stuff up there that Hoffman attached, Schilling's ton of coffee and some other stuff, was nearly a thousand dollars and the eighty sacks of oats were worth \$800?

A. Yes, sir.

By the COURT.—Worth \$10 a sack?

A. Yes, sir—it was the summer time and I had them sold at that, what I could spare, when they attached them.

Mr. RITCHIE.—I would like right here to offer in evidence the return of A. F. Hoffman, deputy marshal, in the case against J. A. Fagerberg on his service of the attachment, the object being to show

(Testimony of J. A. Fagerberg.)

the value of the stuff.

Mr. DIMOND.—We have no objection to it.

Mr. RITCHIE.—We might have a copy made and have it understood that [211—194] it can be substituted for the original.

By the COURT.—Yes, sir.

(Copy, when received, to be marked Defendant's Exhibit #6.)

Q. Did you see this stuff about the time it was attached or just prior to that?

A. No, I never seen it since it was in the Shushana.

Mr. Ritchie read Exhibit 6 to the jury as follows:

Defendant's Exhibit No. 6 [Return of Deputy Marshal Hoffman].

United States of America,

District of Alaska,

Third Division,—ss.

I hereby certify that I received the annexed Writ of Attachment on the 8th day of August, 1914, and thereafter on the same date I served the same at Chisana, Alaska, by taking into my possession the following described personal property of the defendant herein, J. A. Fagerberg:

2 Cases J. B. Agens Butter, 24 cans to case in 2# cans.

16 Cans J. B. Agens Butter, broken lot 2# cans.

18 Sax Oats, very bad condition, wet and growing in sacks.

19 Cases Shillings Coffee—60 1# cans to case.

(Testimony of J. A. Fagerberg.)

9 Cans in broken lot—1# cans.

11 Cases Shilling's Coffee, 2# Tins 30 cans to case.

29 Cans, Broken Lot, 2# to can.

And thereafter, on the same date, I posted a copy of this writ of attachment on the door of a cabin belonging to defendant, J. A. Fagerberg, at Chisana, Alaska, certified to be such by the U. S. Marshal for this Division. That at the time of the levy there was no one in the occupancy of said personal property.

By A. F. HOFFMAN,
U. S. Deputy Marshal.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Sep. 10, 1914. Arthur Land, Clerk. By T. P. Geraghty, Deputy.

Q. How much was at Mr. David's roadhouse?

A. My recollection, about eighty sacks of oats, 78 sacks. [212—195]

Q. You don't know of your own knowledge how much was there? A. No but I have an idea.

Q. The boys were packing and they would report to you from time to time?

A. When they took any out.

Q. It had been taken away either by your own people or stolen by someone else?

A. There isn't much danger of being stolen. There were 78 sacks, I think it was.

Q. I will call your attention to Millsap's return; after describing the other property attached in different places, in the fourth paragraph he says:

(Testimony of J. A. Fagerberg.)

“And thereafter on the same day, I served the same at David’s roadhouse, by delivering and leaving with Chas. Davids, Proprietor, a copy thereof, certified to be such by the United States Marshal, upon Chas. David, by levying upon 78 sacks of oats, marked J. A. F. & Co., all the right, title and interest of the defendant herein, J. A. Fagerberg, and by placing in charge of said oats Chas. Davids, Custodian.”

Do you know in what condition those oats were?

A. They were in first-class condition.

Q. How long since you had seen them?

A. I saw them a few days before that.

Q. They were in good condition?

A. They were in good condition, first class.

Q. When Mr. Millsap first came to levy the attachment at the Blackburn roadhouse, you and Mrs. Damon both made a war talk to him, didn’t you?

A. No, sir.

Q. Didn’t you in the first place threaten to resist going out?

A. No, I said, “Go to it, Jim,” there you are; no war talk to it.

Q. That was when he first came there?

A. That was when he first came there; I told Jim where to head in at later. [213—196]

Mr. RITCHIE.—I will offer in evidence the return of Deputy Marshal Millsap, on his service of the attachment.

Admitted in evidence, without objection, marked Defendants’ Exhibit 7. The Exhibit reads as follows:

**Defendants' Exhibit No. 7 [Return of Deputy
Marshal Millsap].**

United States of America,
Territory of Alaska, Third Division,—ss.

I hereby certify that I received the annexed writ of attachment at McCarthy, Alaska, on the 2d day of August, 1914; I served the same at Blackburn, Alaska, by levying upon all the right, title and interest of the defendant herein, J. A. Fagerberg, general merchandise store, at Blackburn, Alaska, and more particularly described by inventory which is herein attached.

By posting in a conspicuous place upon said premises two notices and serving a copy of the attached writ, certified to be such by the U. S. Marshal for this Division, upon J. A. Fagerberg, the one in charge of said store, and by placing in charge of said store T. T. Lane as custodian.

And thereafter, on the 3d day of August, 1914 I served the same upon Mrs. Lily Damon at Blackburn, Alaska, who claimed to have keys and charge of warerooms for H. M. Fagerberg, by delivering to and leaving with Mrs. Lily Damon a copy thereof, certified to be such by the United States Marshal, by levying upon all the right, title and interest of the defendant herein, J. A. Fagerberg, all general merchandise in said wareroom and more particularly described by inventory which is herein attached.

And thereafter on the same day I served the same at David's Roadhouse, by delivering and leaving with Chas. Davids, Proprietor, a copy thereof, certi-

fied to be such by the United States Marshal, upon Chas. David, by levying upon 78 sacks of oats, marked J. A. F. & Co., all the right, title and interest of the defendant herein, J. A. Fagerberg, and by placing in charge of said oats Chas. Davids, Custodian.

And thereafter on the 4th day of August, 1914, I served the same at the Chititu store, by delivering to and leaving with Mrs. C. F. M. Cole, manager of said store, a copy thereof, certified to be such by the U. S. Marshal, by levying upon all the right, title and interest of the defendant herein, J. A. Fagerberg, in said store, and more particularly described by inventory which is herein attached, and by placing in charge of said store Mrs. C. F. M. Cole as Custodian.

And thereafter, on the 6th day of August, 1914, I served the same by delivering to and leaving with H. M. Fagerberg, at Blackburn, a copy thereof, certified to be such by the U. S. Marshal, by levying upon all the right, title and interest of the defendant herein, J. A. Fagerberg, to wit: Roadhouse, barn, outbuildings, horses, more particularly described by inventory, which is herein attached and by placing in charge of said horses A. A. Hepler as Custodian.

Returned this 8th day of August, 1914.

F. R. BRENNEMAN,

U. S. Marshal.

By Jas. M. Millsap,

Deputy U. S. Marshal. [214—196½]

Q. This is a bill made by the Carstens Packing Company of the stuff furnished to you, money and all, and I will ask you whether it is correct or not?

(Testimony of J. A. Fagerberg.)

The amount seems to correspond with what you have admitted.

A. That is practically correct; to the best of my knowledge it is.

MR. RITCHIE.—That's all.

Redirect examination:

(By Mr. DIMOND.)

Q. Now this Victor Olsen matter—was any evidence given of that Victor Olsen debt?

A. Yes, there was a couple of notes given.

Q. I herewith hand you three notes, each dated Valdez, Alaska, July 8, 1909, and signed by Victor Olsen and ask you if they were given to you and signed by Victor Olsen as evidence of this account?

A. Yes, sir.

Mr. DIMOND.—I now ask that these notes be admitted in evidence and marked Plaintiff's Exhibit "G."

They are so admitted, without objection, marked Plaintiff's Exhibit "G."

Q. What did these notes represent?

A. They represent merchandise I delivered to Olsen.

Q. Where did it come from?

A. Part from Valdez, hay and grain, and part came from the Chititu old stock, in the spring of 1908.

Q. What became of all this property you mentioned having had in Seattle at the time you went into business up there in Chititu?

A. I simply lost it. [215—197]

Q. In what way?

(Testimony of J. A. Fagerberg.)

A. My wife got about \$9,000 out of it and I lost about \$11,000. on my transactions there in the Nizina.

Q. You spoke about \$3,500 worth of stuff going over to the Nizina or about that, in the spring of 1914 and you also stated, if I remember correctly, that the Carstens Packing Co. sent that amount of goods in—is that amount included in the account upon which they sued and attached you? No, it is not.

Q. They never did attach that?

A. They never did attach that—they simply attached the store and contents.

Q. That doesn't enter into the suit of Carstens Packing Co. against you at all? A. No.

Q. How many people were employed around your roadhouse during the spring of 1914, in the business of packing or around the roadhouse?

A. You count them and I will enumerate them.

Q. I mean besides yourself.

A. H. M. Fagerberg, Mrs. Damon and Leo Henderson; there was a Jap boy and then I had an extra man on the mail.

Q. Did you pay these men their wages?

A. I paid the Jap boy and the extra man on the mail.

Q. You owe them nothing then?

A. I owe them nothing.

Q. Now, you have spoken of putting sums of money into mining property, mentioning particularly the Krumm property which afterwards became the Tellurium Mines Company, and the property on

(Testimony of J. A. Fagerberg.)

Seattle Gulch—did you or did you not have any agreement with [216—198] Mr. Carstens or the Carstens Packing Co. under which you had agreed between yourselves that you should do this or were permitted to do this? A. Yes, I had.

Q. State the terms of that?

A. In the winter of 1909, I went to him and he was kicking because I couldn't make any money out of the store and the old stock was getting old and he said, "Let it out, grubstake fellows with it and do the best you can with it, Al"; that is the way he would shake his hands when he got disgusted with that old stock.

Q. Do you know what proportion of the amount of this old stock has been sold up to the present time, actually sold?

A. About all that was sold out of it was the flour.

Q. What proportion?

A. It would be less than a third.

Q. How much is left there yet?

A. Most all the hardware is left there yet.

Q. What proportion of the full amount, the old stock? A. According to value?

Q. Yes.

A. According to value and according to the old stock, there is about a third of it left, according to their old invoice, at the prices they were selling at, the inventory they were selling at.

Q. What became of the other third?

A. Part of it was thrown away.

(Testimony of J. A. Fagerberg.)

Q. One-third you say was sold? You said less than a third.

A. Well, what little of it was sold and used up to feed the men.

Q. The prices were materially reduced after you went away? [217—199]

A. Yes, they were cut 75% any way, lots of it.

Q. It wasn't all cut to that extent?

A. No, the flour was cut way down and the milk and a big lot of it was thrown away.

Mr. DIMOND.—That is all.

Q. (By Mr. RITCHIE.) These notes that Victor Olsen gave you, the body of them is in your handwriting? A. Yes, sir.

Witness excused.

[Testimony of John H. D. Bouse, for Plaintiff.]

JOHN H. D. BOUSE, a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. DONOHOE.

Q. You are chief deputy marshal for this division, are you? A. Yes, sir.

Q. Mr. Brenneman is at this time out of the Territory? A. Yes.

Q. Do you remember a writ of attachment being delivered to you in July, 1914, in the case of the Carstens Packing Company versus J. A. Fagerberg?

A. Yes, sir.

Q. Delivered to your office for service?

A. Yes, sir.

(Testimony of John H. D. Bouse.)

Q. What instructions did you receive from the plaintiff or the plaintiff's attorney as to what property you should levy that writ of attachment upon?
[218—200]

A. Well, I don't know—any property we could find of Fagerberg's up around McCarthy and the vicinity of McCarthy.

Q. Did you later, some time about the third or fourth of August, 1914, receive a wire from your deputy, James Millsap, at McCarthy, asking if he should levy on the property claimed by H. M. Fagerberg?

A. Yes, I believe so, either he said that or Fagerberg claimed that and wanted to know if he should hold it. I am not sure whether he wired and asked if he should attach it or had attached it and asked if he should hold it.

Q. Did you communicate with any one of the attorneys for the Carstens Packing Co? A. Yes, sir.

Q. And did they give you instructions as to what to do in that respect?

A. They told us to hold the property.

Q. And did they also put up to you an indemnity bond to indemnify the marshal for any damages he might incur by reasons of holding the property?

A. Yes, sir.

MR. DONOHOE.—That is all.

Witness excused. [219—201]

[**Testimony of H. M. Fagerberg, for Plaintiff
(Recalled)**].

H. M. FAGERBERG, recalled for further redirect examination.

(Questions by Mr. DIMOND.)

Q. You stated either yesterday or this morning that you had a short conversation or several short conversations, I have forgotten which, with Mr. C. F. Wilt, the attorney for the Carstens Packing Company in July, I think it was, 1914, while he was at Blackburn? A. I did, yes, sir.

Q. Will you state whether or not you told him that you owned the property for which this suit is brought? A. I certainly did.

Q. Did you show him the bill of sale for that property? A. I did.

By the COURT.—When was this, what date?

A. July, 1914.

(By Mr. RITCHIE.)

Q. You had some conversation with Mr Wilt about your liability on account of the goods shipped up that spring, did you not?

A. No, not to any extent.

Q. You talked something about it?

A. It was mentioned, yes.

Q. Did you make an agreement to make a bill of sale to Thomas Carstens under any conditions, for the Nizina store? A. Not with him, no, sir.

Q. You had no conversation with Wilt about it?

A. No, sir.

Q. You didn't agree to make a bill of sale for the

(Testimony of H. M. Fagerberg.)

Nizina store and all the old goods that were left there if Thomas Carstens would relieve both of you from the old debt that was owing to him on the old store?
[220—202]

A. I don't know what the conditions were—he never talked that over with me. Al came to me and said—"If I give you \$500 will you turn it over to Carstens"? and I said, "You give me the \$500 and I will turn it over to anyone you say."

Q. Did you tell Wilt, either in the presence of Al or when he was not there, that you would help pay for the goods shipped up that spring?

A. I never entered into any kind of an agreement of that kind, to be responsible for the new stock of goods in any shape, manner or form.

Witness excused.

MR. DIMOND.—I want to put in evidence the claim against the estate of J. A. Fagerberg, a bankrupt, filed by the Carstens Packing Co. on the 7th day of October, 1914, sworn to by Thomas Carstens before C. F. Wilt. I ask leave to file a certified copy of it, it being a record in the case of the bankrupt estate of J. A. Fagerberg.

Permission granted; certified copy introduced without objection and marked Plaintiff's Exhibit "H." Mr. Dimond reads the Exhibit to the jury as follows:

Plaintiff's Exhibit "H" [Proof of Claim].

*In the District Court of the United States for the
Territory of Alaska of Third Division.*

In the Matter of the Estate of J. A. Fagerberg,
Bankrupt.

Proof of Claim in Bankruptcy.

At Tacoma, in the State of Washington, on the 7th day of October, A. D. 1914, came Thos. Carstens of the City of Tacoma, in the County of Pierce, in said State of Washington, and made oath, and says that he is duly authorized to make this proof and says that the said J. A. Fagerberg, the person against whom a petition for adjudication [221—203] of bankruptcy has been filed was at and before the filing of the said petition and still is justly and truly indebted to said DEPONENT FIRM CORPORATION in the sum of Ten Thousand Dollars, on account of goods, wares and merchandise belonging to said Thomas Carstens, which said bankrupt converted to his own use.

That the consideration of said debt is as follows: That no part of said debt has been paid; That there are no set-offs or counterclaims to the same; that no note has been received for such account nor any judgment rendered thereon. And that this deponent has not, nor has his said FIRM CORPORATION nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of security for said debt whatever.

THOS. CARSTEN.

Subscribed and sworn to before me, this 7th day of October, A. D. 1914.

[Notarial Seal]

C. F. WILT,

Notary Public in and for the State of Washington,

Residing at the City of Tacoma, in said State.

Plaintiffs rests. [222—204]

Defense.

[Testimony of E. E. Ritchie, for Defendant.]

E. E. RITCHIE, called as witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LYONS.)

Q. You are the attorney for the defendant in this case, or one of the attorneys?

A. Yes, one of the attorneys.

Q. And you are also one of the attorneys in the case of the Carstens Packing Co. against J. A. Fagerberg? A. Yes—I have the files here.

Q. There is an allegation made in there to the effect that the time that complaint was filed the Carstens Packing Co. did not know anything about this partnership— Will you please explain that to the jury?

A. That is in the amended answer. I simply wish to explain this, that whatever errors there are, whatever statements of fact that are erroneous in the pleadings, in either case, are due to myself, to a lack of knowledge of the case at the time the pleadings were filed. The case was brought to me in the first instance about noon, possibly a little after, on the

(Testimony of E. E. Ritchie.)

31st of July, I think it was. Fred Glassbrenner came up from Cordova to see me and didn't succeed in finding me until about noon—every time I was out of the office he came and vice versa and we never met until either just before or just after noon, and he then handed me a package of papers, about an inch thick, documents furnished him by Mr. Wilt, and a long letter from Mr. Bunnell. Mr. Bunnell had been retained in the case but was on his way to Skagway to attend a political convention and he forwarded everything to me, with the suggestion that I bring an action and I had instructions to bring an attachment [223—205] suit, and the letter from Mr. Bunnell and the letter from Mr. Wilt to him instructed me to bring the suit against Fagerberg Brothers. I had to go through, as I say, a stack of papers, at least an inch thick, some fine typewriting, in order to familiarize myself with the case and I saw that some of the grounds were simply against J. A. Fagerberg, also that the judgment recovered had been against J. A. Fagerberg and I decided that Wilt and Bunnell were wrong on their view of the case, it was absolutely necessary to bring the case against J. A. Fagerberg, therefore on my own responsibility and contrary to the instructions I had received, I sued J. A. Fagerberg alone and I verified the complaint, as well as the affidavit for attachment, as is shown by the papers in this case. Neither Mr. Carstens nor Prater nor anybody else ever saw that complaint, I guess, to this day, although they have perhaps seen since copies of it. Later on I got further informa-

(Testimony of E. E. Ritchie.)

tion on the case and after Mr. Dimond had filed an amended complaint, we filed an amended answer and that amended answer contains as is shown the statement that at the time the action was brought in July, the last of July, the Carstens Packing Co. did not know that Fagerberg Brothers were partners. That answer was drawn in Seattle by Thomas R. Lyons and sent to me and on that information, I modified and changed it—I did not use the one Tom Lyons sent me but I changed it a little and put in that statement and that also is verified by myself. If there are any inaccuracies or any blunders committed or any contradictions in the pleadings myself and Judge Thomas Lyons are responsible and not Mr. Prater or Mr. Carstens, because they never have seen the original pleadings to this day, for the obvious reason that they have always been in Valdez.

Q. None of the officers of this company live in Valdez at all? [224—206]

A. No and have never been here at all. When I was there, Mr. Carstens was in Tacoma and Mr. Prater was in Seattle.

Q. Mr. Carstens is president of the company and Mr. Prater secretary of the company?

A. I believe so, I think those are their positions.

Cross-examination by Mr. DONOHUE.

Q. On the original suit, in which the Carstens Packing Co. is plaintiff against J. A. Fagerberg, defendant, you say the data was sent you to Valdez?

A. From Mr. Bunnell at Cordova.

Q. Now, that data showed a personal judgment

(Testimony of E. E. Ritchie.)

against J. A. Fagerberg obtained in King County, Washington, some time in July, 1914, did it?

A. Yes, that is correct, except the date—I don't remember the date.

Q. It also showed, that personal judgment showed that neither the Fagerberg Brothers nor H. M. Fagerberg had been made a party to that judgment?

A. I didn't have the full record but there was no mention of H. M. Fagerberg in the judgment.

Q. You had a certified copy of the judgment?

A. Yes.

Q. You know as a lawyer that necessarily H. M. Fagerberg or the Fagerberg Brothers were not parties to the suit when the judgment was obtained against J. A. Fagerberg?

A. It might have been originally brought against H. M. Fagerberg and dismissed as to him, but the judgment, of course, was finally rendered on the pleadings as they stood at the time it was tried.

Q. Now, besides that, there was enclosed a statement of account on a [225—207] Carstens Packing Co. billhead, was there not?

A. I don't think so, there may have been though; I think that came later.

Q. And that statement of account showed it was an account against J. A. Fagerberg?

A. I wouldn't say that, but I would say this, which has the same effect that in the first letter which Mr. Bunnell had written to me, it was admitted that the transactions that Mr. Carstens had were individually with Mr. J. A. Fagerberg, that is that the dealings

(Testimony of E. E. Ritchie.)

personally were with Mr. J. A. Fagerberg.

Q. Have you that statement of account and can you produce it, which is the basis of the second cause of action in the complaint of the Carstens Packing Co. against J. A. Fagerberg?

A. I either have a statement of account or a rough draft of it in one of the letters from Mr. Wilt. I have a stack of letters over at the office that I have not brought to the courthouse.

Q. And that statement of account—it is an account against J. A. Fagerberg individually, is it not?

A. I don't think so, but I will bring it in. I won't undertake to testify until I bring that in. I have half a bushel basket full of statements and letters and I won't undertake to testify what is in them without seeing them again.

Q. You had an account here a few moments ago that you presented to Mr. Fagerberg when he was on the stand on a Carstens billhead? A. Yes.

Q. Can you produce that at this time?

A. It is on the table. I don't remember when that came, I picked that out a day or two ago from a letter much later than July, but I don't know when it came to me.

Q. I hand you a statement on the Carstens Packing Co. stationery, [226—208] dated July 1914 and ask you if that is the statement on which you based your second cause of action in the case of the Carstens Packing Co. against J. A. Fagerberg?

A. I couldn't say but it is my impression that I did not base the second cause of action on any de-

(Testimony of E. E. Ritchie.)

tailed statement but simply on the aggregate amount, as I did in the first place.

Q. Your information was that it was an account against J. A. Fagerberg, was it not?

A. Yes, that is, I think the shipments were made to J. A. Fagerberg and he was the man most directly concerned; I think there is no dispute about that. I think Mr. Carstens admits it in his deposition.

Q. You knew at that time, did you not, that you could not sue H. M. Fagerberg and get a writ of attachment out against him based on a judgment obtained against J. A. Fagerberg?

A. I knew that. Now may I explain right here?

Q. Yes, go ahead.

A. It is for the reason which you can readily understand as a lawyer that I saw I could not join a judgment against J. A. Fagerberg with a joint account against J. A. Fagerberg and H. M. Fagerberg because I would have been demurred out on a misjoinder.

Q. But you knew quite well as a lawyer that an execution issued on a complaint which was the basis of the judgment obtained against J. A. Fagerberg, could not be levied against property of H. M. Fagerberg?

A. No, not if it was really H. M. Fagerberg's property.

Q. You also had no knowledge at that time of the alleged copartnership existing between H. M. Fagerberg and J. A. Fagerberg, as you contend to have?

A. Yes, in a general way I had, myself. [227---209]

(Testimony of E. E. Ritchie.)

Q. What was that general way?

A. I had seen these ads in the newspaper. I was the principal owner of the newspaper, although I did not have very much to do with running it, while that ad ran, along about 1909 and 1910—the first ad they ran of the Nizina store, I remembered that. I also remembered distinctly that in the Victor Olsen case, in which I succeeded W. T. Love as attorney, one part of it, one of the items of claim, was that of the Fagerberg Brothers against Victor Olsen—I remembered distinctly about that.

Q. Now, did you receive any instructions from Mr. Wilt, who is the conceded attorney for the Carstens Packing Co., directing you to bring a suit against the Fagerberg Brothers at that time?

A. Yes, that was my instructions.

Q. Have you that instruction now?

A. Yes, sir.

Q. Can you produce it to-morrow morning?

A. I will think about it a little bit before I show it to you, because I am not sure but that it is a confidential communication, but I don't mind saying that my instructions from both Mr. Bunnell and Mr. Wilt were to sue Fagerberg Brothers, but they overlooked the fact which I caught quite readily that if they sued on a joint account and on this judgment there would be a misjoinder.

Q. And in order to avoid that misjoinder you sued J. A. Fagerberg and as attorney for the Carstens Packing Co. instructed the marshal to levy on the property of H. M. Fagerberg?

(Testimony of E. E. Ritchie.)

A. No, I instructed him to levy on all the property claimed by either of the Fagerbergs.

Q. Although your suit was against J. A. Fagerberg alone?

A. On the ground that it was partnership property. [228—210]

Q. And if you sued either one of them alone, you could hold any property that *belong* to either of them?

A. It was on this account I dropped H. M. Fagerberg's name; if J. A. Fagerberg and H. M. Fagerberg were both liable on it, each one was liable alone and therefore there was no harm in suing simply J. A. Fagerberg alone.

Q. You knew quite well, however, that suing on a foreign judgment, that H. M. Fagerberg had no opportunity to defend against that judgment, and never had his day in court? A. Precisely.

Q. And in order to enable you to avoid a misjoinder, you brought the suit in the name of J. A. Fagerberg and levied on the property of H. M. Fagerberg under attachment?

A. I don't think I ordered the levy on any independent property of H. M. Fagerberg.

Q. Now, then in regard to the allegation in your amended answer—

Mr. LYONS.—I think this whole line of testimony is incompetent—it is hardly cross-examination. These pleadings show for themselves what has been done. Whatever Mr. Ritchie has done does not bind this plaintiff—they are not responsible for his acts

(Testimony of E. E. Ritchie.)

when he has made an error. The only purpose of putting Mr. Ritchie on the stand was to show that he made this error and he goes into a whole line of questioning regarding partnership law which in my opinion is not relevant to the matter at all.

By the COURT.—Probably both attorneys have been indulging in a little legal argument, but I think these questions may be considered proper cross-examination in view of the testimony offered by Mr. Ritchie himself as to his correction of the pleadings.

Q. Who drew the original amended answer which was filed in the [229—211] case now on trial?

A. As it is filed I drew it. It was changed slightly from one Thomas R. Lyons sent me.

Q. Who drew the first answer? A. I did.

Q. In the first answer you claim that the property is the property of J. A. Fagerberg; in the amended answer you claim that the property is the property of a firm of Fagerberg Brothers, comprising J. A. Fagerberg and H. M. Fagerberg, do you not?

A. That is true.

Q. Now, the purpose of this cross-examination goes further than the testimony just offered in reply to the allegations in that amended answer that Judge Lyons of Seattle sent up to you—Did he not have the allegation in that answer that he did not know of the alleged copartnership between the Fagerberg Brothers at the time of bringing the suit of the Carstens Packing Co. against J. A. Fagerberg?

A. I am not sure but there was probably some-

(Testimony of E. E. Ritchie.)

thing like that—I modified the answer in several particulars.

Q. Have you that original draft?

A. I guess so.

Q. The reason I ask this is, that Thomas Carstens in his deposition, has testified that he knew nothing of that answer, that allegation in the amended answer, not knowing about the copartnership and I would like you to produce that original draft tomorrow morning?

A. If I have it I will do it unless I decide as I said about the other document, that it is a confidential communication and I should not.

Q. That is a matter you can decide—I will not press you and will [230—212] not ask the court for an order.

A. It is only a matter of opinion—if you will allow me to give an opinion, and if you don't like it you can ask to have it stricken out—my opinion is that the answer was drawn by Tom Lyons only after consultation with Mr. C. F. Wilt.

Q. Wilt had been in Alaska just previous to the filing of this suit? A. Yes, sir.

Q. Calling your attention to the original answer which states that if H. M. Fagerberg was in possession of this property at the time of the attachment he was only in possession of it as the employe and agent of J. A. Fagerberg—where did you get that information?

A. I guess out of my own head. I was simply stating the case the best I could on the limited infor-

(Testimony of E. E. Ritchie.)

mation I had—my instructions were to act that way.

Q. You will not state that the original draft of this amended answer which was prepared in Seattle and sent up to you did contain the allegation that the Carstens Packing Co. had no knowledge of the alleged copartnership between the Fagerberg Brothers until after the filing of the complaint in July, 1914?

A. The complaint which was sent to me as an outline was drawn by Mr. Bunnell, I think, on the stationery—

Q. I mean the amended answer—is what I have reference to?

Please read the last question, Mr. Reporter.
(Last question read.)

A. No, I won't say it did not—I think it is very likely it did have something like that but not in those words.

Q. But you say your understanding is that the complaint was prepared after consultation with Mr. Wilt? A. I think so.

(Witness Excused.) Adjourned until ten tomorrow.) [231—213]

Wednesday, May 12, 1915. Morning Session.

Mr. DONOHUE.—Mr. J. A. Fagerberg has the vouchers referred to yesterday by counsel and we will put him on the stand again.

[**Testimony of J. A. Fagerberg, for Plaintiff
(Recalled).**]

J. A. FAGERBERG, recalled for further cross-examination.

(Questions by Mr. RITCHIE.)

Q. You have vouchers there showing what moneys you paid out between March and August, 1914 in your business up there?

A. I have a good share of them, yes, sir.

Q. Will you produce what you have?

(Witness does so.)

Q. First I will ask you if you have any means and data at hand of ascertaining approximately the amount of money paid out in that time on all accounts?

A. Approximately, yes—somewheres between eight and nine thousand dollars, as near as I can get at it.

By the COURT.—This eight or nine thousand dollars is what?

A. It is money I paid out from the time I started in there until the first of August in the year 1914.

Mr. DONOHOE.—From February to August, 1914?

By the COURT.—You paid out that amount of money?

A. Yes, sir.

Q. (By JUROR.) Beginning at what time?

A. Beginning about the 15th of March, 1914.

By the COURT.—From March to August, 1914?

A. Yes.

(Testimony of J. A. Fagerberg.)

Mr. DONOHOE.—That is when you returned from Seattle last spring?

A. That is when I returned from Seattle last spring.

(By Mr. RITCHIE.)

Q. Between eight and nine thousand dollars?
[232—214] A. Yes, sir.

Q. Now, will you just give the amounts, the items, so far as your vouchers and receipts show?

A. The total?

By the COURT.—No, each item, take each item and give the name and amount and what it is for, generally.

A. I will take the freight bills—this will all be freight bill—\$119.59—

Q. Give the name and date.

A. It is the Copper River & Northwestern Railway Co. all the way through 4/2—\$119.59.

Q. On what was that, what shipment, what goods—doesn't it show?

A. Cordova—that is all it shows; it doesn't show the shipping bills or anything else. I can give you the items on the bill.

By the COURT.—Can you tell who it is from and what it was?

A. Why, it is hams and bacon—it is from the Carstens Packing Co.

Q. This is Breedman & Church, laundry?

A. Yes, a bundle of laundry, 83¢

Q. L. A. Brown, charges meat?

A. \$12.83—the shipping bill was made to L. A. Brown.

(Testimony of J. A. Fagerberg.)

Q. This was a freight bill?

A. A freight bill, yes.

Q. On what?

A. On meat and one thing and another, cold storage and covered charges in refrigerator on meat and cartage on same to and from storage, with bill attached. There is a bill covering this somewheres, I don't know where it is. It is dated 4/29, Shipper's orders, J. A. Fagerberg, \$9.59.

Q. Two cases, Chitina, J. A. Fagerberg?

A. \$2.60—I couldn't say what it is or who it is from or anything—the freight bill doesn't show. Fagerberg, Cordova, Blum 50¢ [233—215] Notify Fagerberg, J. A. Cordova, Northwestern, 4/22—20 sacks of sugar, 5 rice, \$72.95.

Q. That is just the freight bill alone?

A. That is just the freight bill alone, yes, sir—these are strictly freight bills.

Q. All of these are freight bills?

A. Yes, sir, all of these are freight bills. J. A. Fagerberg, Blum, 2 sacks, 4/22—\$6.31. Notify Charley Town—I took up the freight bill and took up the merchandise.

Q. What is the amount and date

A. 4/14—Cordova, Blum, \$11.07. Notify Charley Town, Northern Meat Market, one case Chicks 3/20—\$3.28. Notify Charley Town, Cordova, Northern Meat Market, quarter beef, \$6.20, 4/4. J. A. Fagerberg, Cordova, Steamer "Alameda"—I wouldn't be positive on this so I couldn't say. I don't remember just what I did pay on it. Shillings & Co. date

(Testimony of J. A. Fagerberg.)

8/11, Steamer Northwestern, 2 bags coffee \$9.52 C. O. D. \$24.25 and express 90¢ total \$34.95 on that one bill. Klock Produce Co. 8/11 C. O. D. \$37.70 expressage 80¢, freight \$13.50; Fagerberg, Cordova, \$58.37 date 8/17—it doesn't give the steamer. J. A. Fagerberg, Cordova, \$6.58, cash tab 8/17. 4/2 Cordova, Alameda, \$75.69.

Q. What was that? What is the character of the goods?

A. Merchandise, raisins and canned goods.

Q. From whom?

A. I couldn't say where it is from—it doesn't give the initial point.

Q. Proceed.

A. Shipper's orders Fagerberg 7/6—\$34.60. Shipper's orders J. A. Fagerberg 7/6—\$39.67; 7/6—\$3.70 Shipper's orders Fagerberg 6/30—\$5.33. Kluck Produce Co. 6/30—\$107.56. Notify Fagerberg, Cordova, Blum—\$6.37, date 7/3; 6/27—\$5.33; Fagerberg Laundry \$1.49; [234—216] Fagerberg, Cordova, Alameda, date 5/6—\$70.99; Fagerberg, Cordova, Evans, 4/11—\$10.77; Fagerberg, 4/11, bundle of tubs; J. A. Fagerberg 6/9, Cordova, \$48.95; J. A. Fagerberg 6/7—\$18.39. L. A. Brown,, Cordova, 6/9—\$52.42. Shipper's orders, Cordova, 6/15—\$7.91; J. A. Fagerberg, 6/15, Cordova, \$12.69; Shipper's orders, Cordova—\$28.72; 6/15 Shipper's orders, Fagerberg, \$48.17; Shipper's orders 6/16—\$17.27; L. A. Brown 6/2, Cordova, \$9.92; L. A. Brown, \$18.89, 6/2; 6/22, J. A. Fagerberg—\$13.86; Shipper's orders Fagerberg 6/22—\$14.50. Northern Cold Stor-

(Testimony of J. A. Fagerberg.)

age, L. A. Brown, \$2.78; L. A. Brown, freight, 6/22—\$9.22; L. A. Brown, 6/22—\$18.66.

By the COURT.—What does this mean, L. A. Brown?

A. It was shipped up in his name and I took the stuff over.

Mr. DONOHUE.—Who was L. A. Brown?

A. L. A. Brown was supposed to be sent up there as the representative of the Carstens Packing Co.

Mr. DONOHUE.—And some of these bills were shipped in his name?

A. Some of the bills were shipped in his name and I took them over and paid the freight bill.

Mr. DONOHUE.—Some of the goods that Carstens sent up there were shipped in the name of L. A. Brown and turned over to you there and you paid the freight on them? A. Yes, sir.

Mr. DONOHUE.—And L. A. Brown was Mr. Carstens personal representative? A. Yes, sir.

(Questions by Mr. RITCHIE.)

Q. Mr. Brown was the man we had some testimony about yesterday, who was sent up there to take charge? A. Yes, sir.

Q. You and he didn't get along very well? [235—217]

A. No.

Q. You may proceed.

A. Shipper's orders Blum \$44.30, 6/22; 6/22, Cordova \$13.86. Notify Fagerberg 6/22 Steamer Northwestern" \$114.94—on that there is \$181.30 C. O. D. also.

(Testimony of J. A. Fagerberg.)

Q. That is in addition to the \$114?

A. Yes, sir.

Q. The \$114 was freight?

A. Yes, sir—the amount of the C. O. D. was \$179.35 and the expressage on the money was 95¢.

Q. What was the shipment?

A. Forty sacks of sugar.

Q. Where did you get the sugar?

A. From Schwabacher. Shippers orders, freight \$3.63 and C. O. D. \$32.30 dated 6/5; 6/5, C. O. D. \$163.17. Shipper's orders, freight \$40.20; shipper's orders, C. O. D. \$70.97, freight, \$28.97, date 6/5.

Q. Who is that a shipment from?

A. I couldn't say.

Q. And who was the \$163 one from, you just read?

A. From the looks of it it is the Imperial Candy Co. Shipper's orders 6/5, C. O. D., \$70.95, freight \$28.97.

Q. Do you know who that was from?

A. More likely from Schwabacher. Shipper's orders, 6/5, C. O. D., I think, freight, \$32.92—I don't know what the amount of the C. O. D. is on it. J. A. Fagerberg, 6/2—\$15.61. L. A. Brown, 6/2—\$73.23.

Q. What was that a shipment from, Carstens?

A. That was some meat from Carstens. Here is one I don't know what it is—it is only 69¢, I don't know what it is. Fagerberg, 8/24—\$87.54; this is freight on the oats, \$1,638.30.

Q. \$1,500 of that was paid by Mr. Carstens?

[236—218]

(Testimony of J. A. Fagerberg.)

A. Something in that neighborhood, yes, sir.

Mr. DIMOND.—You paid something additional, did you? A.

A. Yes, sir.

Mr. DONOHOE.—And the \$1,500 is included in the claim of Mr. Carstens against you now?

A. Yes, sir.

Mr. RITCHIE.—We want what Mr. Fagerberg himself paid.

Q. How much of the \$1,638 did you pay out of your own funds, do you know?

A. All over \$1,506.

Q. That is, \$132? A. Yes, sir.

Q. Why didn't you draw the draft for the full amount?

A. At the time it was an oversight or clerical error on the part of the clerk somewheres and they came back for a second helping. 3/16—here is another one for \$1.35 on the same article; they came back for three helpings on that.

Q. What is the date of that?

A. 3/16. There is a memorandum here—I don't know whether I have the freight bills to it or not or what it is. The memorandum is Lattin's memorandum—\$1,019.21 freight and there is something like \$559.89 in C. O. D.'s.

Q. What is that shipment?

A. I couldn't tell you, it is just a memorandum of some freight bills of Mr. Lattin's—I couldn't tell you, there might be some of the items in there and some not.

(Testimony of J. A. Fagerberg.)

Q. That is the total of a lot of shipments?

A. That is the total of a lot of shipments, yes, it is a memorandum of his.

Q. It is a memorandum made by the agent there, Mr. Lattin? [237—219] A. Yes, sir.

Q. These are his figures?

A. These are his figures. I paid something like \$800 on the freight bill and was short.

Q. This is the total amount that Mr. Lattin figured up?

A. Yes, sir, this is the total amount that Mr. Lattin figured up—the \$559.89 is C. O. D.'s and the freight \$459.32, that makes \$1,019.21. Here is the Breedman & Church notes you were asking about yesterday, Mr. Ritchie, a thousand dollars, and I paid something like—

By the COURT.—Who was the payee of the note? Mr. RITCHIE.—Breedman & Church.

By the COURT.—What is it for?

A. It was for some merchandise I took when they closed out—I took it over and gave them the notes for it.

Q. It was in the roadhouse?

A. Yes, sir, it was in the roadhouse.

Q. Were you in the roadhouse?

A. No, not in the roadhouse—I took over the stock from them when they were moving out; I took the stock out.

Mr. DONOHOE.—In March, 1914, they had a stock of goods in the store adjoining the roadhouse?

(Testimony of J. A. Fagerberg.)

By the COURT.—You were running a store adjoining the roadhouse?

A. No, I was taking over the stock that Breedman & Church had.

Q. After you took it over, did you conduct a store yourself there? . A. Yes, sir.

Q. Without your brother being interested?

A. Yes, my brother had absolutely nothing to do with it—I had full control of it. [238—220]

Mr. DIMOND.—How did your brother's name come to be signed to it?

A. When it came to be computed I had the note made in three different payments and he said, "I can't take your note for it because Harry has the bill of sale for it and I wouldn't take your word, just your word, for it and you get Harry to sign it," and he went to Harry himself and got Harry to sign the notes separate. There is \$126 over that I paid personally.

(By Mr. RITCHIE.)

Q. What is the total amount of those notes?

A. One thousand dollars, and I paid \$126, I think, something in that neighborhood.

Q. For interest?

A. No, it was for the goods. He just let that run on my own personal account.

Q. Just in the account?

A. Yes, just in the account.

Q. When did those Church notes fall due?

A. June 3d, July 3d, and May 3d.

Q. Did you pay each as it was due?

(Testimony of J. A. Fagerberg.)

A. Yes, sir. Now, here is May 16, Schwabacher, \$110.40; we have here a C. O. D. on the Imperial Candy Co., \$15; for dog salmon, \$10. May 27, Blum & Co.; A. G. Frye, \$21.81, 5/23; May 22, Schwabacher, \$69.72. Here is the Carstens Packing Co. goods and merchandise that came to the house.

Q. How much? A. \$620.27.

Q. That is just one shipment?

A. That is just one shipment, I believe.

Q. (By the COURT.) Came to what house?

A. To the roadhouse, after I went out.

Q. Who is that charged to? Who owes it? Who got it? [239—221]

A. I got it, under my understanding.

Q. What is the date of it?

Mr. RITCHIE.—March 4 and March 19, 1914. There are four of these sheets, one of them March 4th? A. They all came the same time.

Mr. RITCHIE.—You were running the roadhouse yourself, then, for the time?

A. Under this agreement I ran the roadhouse from the 4th of March and also took over the store from Breedman & Church.

(By Mr. RITCHIE.)

Q. There are four of these—is this total carried forward? A. Yes, sir.

Q. What was the total amount?

A. \$620.27. Klock Produce Co. April 11, \$40.32; 4/17—\$21.08 Schwabacher; \$126.75 sight draft with bill attached from Schwabacher; April 30, \$179.35 Schwabacher—E. C. Clise & Co. April 24, \$50; Charles

(Testimony of J. A. Fagerberg.)

Town, April 1, \$45.70, that is from the Northern Meat Market; Schwabacher sight draft \$21.08 bill attached, April 18; \$110.40 Schwabacher, May 18th; May 22, Schwabacher, bill attached to draft \$69.72. Two bills from the Carstens Packing Co. meat bills; Klock Produce Co. May 30, \$73.80; May 30, E. C. Clise & Co., \$43.59; Schwabacher sight draft, bill attached, \$179.35.

Q. Freight separate on that? A. Yes, sir.

Q. How much?

A. You have the freight bills of that if it is in there at all—the \$179.35 is the sight draft with bill attached.

Q. Is it all included in the \$179?

A. Yes, sir. I have given you the Imperial Candy Co. June 5, [240—222] Schwabacher, \$278.55; Rosenfeld, Rovig & Co. \$62.30, June 5; June 18, S. Blum & Co., \$43.65. Have I given you an item of \$278.55? Q. Yes, a moment ago.

WITNESS.—June 5, Flick, Van Slyke & McCumber, St. Paul, May 11, \$81.60; Schwabacher, June 24, \$6.52; June 24, Schwabacher, \$102.84; June 25, Clise, \$16.69; June 25, prepaid \$13.50 on eggs; June 24, Klock, \$34; March 14, A. E. Todd, \$4.00; July 24, Schwabacher, \$41.92; July 24, Frye & Co., \$60.00; Schwabacher, July 23, \$24.55; here is a bill for duplicate slips, \$21.65—it was the cash pads, Pacific Manifold Book Co.; it should be \$20.98, I think. April 21, here is the order Mr. Ritchie made out for Fagerberg Brothers, \$121.15, Schwabacher.

Q. What is the date?

(Testimony of J. A. Fagerberg.)

A. April 21, 1914. Here is a balance on some freight bills of \$189.16 that I have no check on; it is a general balance and memorandum dated 6/14; insurance on the oats, \$7.50; Schwabacher, July 24, \$167.80. That completes what I have. There are other bills, but I have missed them—I don't know where they are in the mixup.

By the COURT.—Can you give approximately the total amount of goods you bought on credit during this time, from March to August, 1914?

A. The credit business I done was very little except what is really in my invoice or schedule in bankruptcy.

(Question by the COURT.)

Q. What does that aggregate about, approximately, haven't you any idea?

A. I can't recall it to mind just now, what it did amount to, to figure it out separately.

Q. Your debts here, according to this, is—H. M. Fagerberg, your [241—223] brother, \$4,800. Now, exclusive of that, your debts would total, according to this, \$13,660? No, that includes the \$4,800.

A. Some of that is the old judgment and one thing and another; that is included in that, too.

By the COURT.—This amount Carstens Packing Co., \$5,918. That is the judgment?

Mr. DONOHOE.—\$2,600 is the judgment and about \$4,020 is goods and money furnished in this enterprise.

By the COURT.—Then \$4,800 of the amount to H. M. Fagerberg and \$2,600 to Carstens on the old account?

(Testimony of J. A. Fagerberg.)

Mr. DONOHOE.—Yes, sir. Then there are some wage accounts there.

By the COURT.—Mrs. Damon, \$150 N. Y. Life Insurance Co. \$150, that is \$300.

Mr. DIMOND.—And there was an additional \$300 to each of these persons.

By the COURT.—I want to get at the total amount of indebtedness incurred by him for goods received during this time.

Mr. RITCHIE.—There is \$900 of claims for priorities for the preceding three months—\$900 additional; they are in the schedule of priorities.

By the COURT.—In round numbers there is about \$5,600 of goods then that you bought on credit during this time? A. Is it that much?

Mr. DONOHOE.—Including the Carstens \$4,000. (By the COURT.)

Q. Did you make any payments on that at all during this time?

A. Not any, according to the books.

Q. How were you to repay this \$4,000?

A. That \$4,000 of Carstens was under this agreement that they [242—224] were to send a man up there, to send me up a bookkeeper or send me up one of their auditors to start a bookkeeper under the corporation, and he was to come in with \$10,000.

Q. Weren't you to pay for these goods, this \$4,000?

A. No, sir. That was his, put in to protect the business and go ahead with it and protect his old interests in it.

Mr. DONOHOE.—That was the working capital of this corporation?

(Testimony of J. A. Fagerberg.)

A. That was the working capital of this corporation, in other words.

Q. And when they didn't incorporate, this *belong* to you, this \$4,000 worth of goods?

A. Naturally speaking, that is *where* Wilt and I were rowing about. I offered to pay him back and we made that agreement, that he was to get that \$4,000 back if he made it a reasonable time so I could adjust myself to those conditions and he agreed for the company, the Carstens Packing Co., consented to it. They were trying to hold me up on the old Nizina stock, that is where the fight came—he was going to force me to pay out \$12,500 for that stock and I claimed that it wasn't worth a thousand dollars to blow it to hell, because I lost all the money I had on it.

(Questions by Mr. RITCHIE.)

Q. Was there any correspondence with Mr. Thomas Carstens or Mr. Prater or any one representing the Carstens Packing Co., regarding that proposed incorporation after you arrived in Alaska in 1914? A. I think we had.

Q. Have you any of those letters in your possession in Valdez?

A. Not to my knowledge, I have not.

Q. Would you say positively whether you received one, two, three or four letters from representatives of the Carstens [243—225] Packing Co., concerning this proposed incorporation?

A. No, I cannot.

Q. Did you receive any from Thomas Carstens

(Testimony of J. A. Fagerberg.)

himself? A. I received some messages.

Q. Did you receive any letters from Thomas Cars-
tens personally regarding this?

A. I know I received one or two, but I don't know
where they are at now.

Q. Did you receive any from W. H. Prater?

A. I never received any from Mr. Prater during
this last transaction.

Q. The only letters you received were one or two
from Mr. Thomas Carstens?

A. From Tom Carstens, the rest of them were
missing.

Q. Now, have you been able to figure over night
how much money you received from all sources after
you returned to Alaska, up to the date of the attach-
ment, about the first of August?

A. No, sir, I couldn't say, exactly, but the best I
could give you on that—the way I worked it was from
the hotel register—would give you the receipts there,
but I haven't got that; I don't know where it is, the
hotel register—possibly it is in the house up there.

Q. About how much do you think you got from the
roadhouse, that is, from the hotel part of it?

A. I couldn't say; it would average there in the
spring, take the average all the way through, it would
average ten dollars a day.

Q. For five months?

A. For five months—it might vary.

Q. 300 a month, do you think? A. Yes, sir.

Q. Do you think you took in \$1,500 in cash from
the roadhouse? [244—226] A. All of that.

(Testimony of J. A. Fagerberg.)

Q. And you think you took in from the sales of goods at the store, how much?

A. I couldn't say as to that—I also have the sales slips of them.

Q. Are they in the city?

A. No, they are not—they are probably lost in the mixup in the store.

Q. You stated yesterday that you thought the sales ran perhaps a thousand or twelve hundred a month—do you think that is about the amount?

A. I would guess somewhere in that neighborhood.

Q. Would it be as much as \$1,200?

A. Possibly, I wouldn't say definitely.

Q. Would you say a thousand would be nearer the figure? A. Between a thousand and twelve hundred.

Q. Say, \$1,100—that would be \$5,500 for the five months? A. Yes.

Q. Now, you didn't give anything—you didn't get anything from the Nizina store—that was being handled in another way?

A. From the Nizina store I got absolutely nothing.

Q. What did you receive from your mail contracts during that time?

A. I received but very little and that mostly went out for labor.

Q. I am talking about what you received.

A. 300 and 125—\$425 a month.

Q. How many months? A. May and June.

Q. \$850. A. Yes, sir.

Q. And what did you receive from freight contracts?

(Testimony of J. A. Fagerberg.)

A. Most of the freight contracts was the freight from the business, [245—227] say, coffee and ham and bacon that was hauled into the Shushana—most of that was my own work.

Q. Did you do any work for the Kennecott Mines?

A. Not in 1914.

Q. Did you do anything for the people on the Nizina and Chititu?

A. I didn't do any freighting in—some things I packed for the store that Brown took over and I never got credit for a thing.

Q. You received practically nothing for freight during that time?

A. Not to any great extent—the Nizina store during May and June ran about three or four hundred dollars a month.

Q. The business you mean of the Nizina store?

A. No, the packing to the Nizina store.

Q. Did you receive cash for that?

A. No, it went into the Nizina store, most of it—Brown took that.

Q. I want to get at the cash you received.

A. I didn't get any of that in cash at all; I haven't got credit for it yet.

Q. Do you think you got a few hundred dollars in cash for small freight contracts?

A. I might have gotten a few dollars.

Q. Three or four hundred?

A. Three or four hundred, yes, in small lots, pick-ups.

Q. Perhaps \$350, in pick-ups? A. Yes, sir.

(Testimony of J. A. Fagerberg.)

Q. You spoke about paying out on the freight contracts for labor—to whom did you pay that?

A. I don't know who was on that freight layout to Chititu—Harry will have to testify to that.

Q. You had other persons working for you on the freighting besides [246—228] Harry and Henderson?

A. There was ten head of horses and it would take more than two men to handle them.

Q. And how much cash did you pay out for labor, in those five months?

A. It would be close on to a thousand dollars extra labor that I paid for in cash.

By the COURT.—How much profit did you make then on these ten horses during this time?

A. The profit on the horses at that time under the conditions of the business and the conditions of the country was very little. It distributed the feed and gave me the fall business. August and September are the big months. Those ten horses the chances are would run in those two months, August and September, in the neighborhood of about \$4,000, but the preliminary work in distributing the feed all has to be done on the ice in the spring and if you haven't got that established, your feed out, you simply can't do any packing business in that country.

Q. How much cash did you have at the time of the attachment?

A. I had a couple of hundred or three hundred dollars, I guess.

Q. Have any bank deposit anywhere?

(Testimony of J. A. Fagerberg.)

A. No, sir.

Mr. RITCHIE.—That will be all.

(By Mr. DONOHOE.)

Q. You have introduced a number of bills here?

A. Yes.

Q. In whose name are these goods billed to you?

[247—229]

A. J. A. Fagerberg. All except one item.

Q. All but one bill? A. All but one bill.

Q. Of that entire stock of goods, everything there is billed to J. A. Fagerberg?

A. And on individual shipper's orders.

Q. Except one isolated order from Schwabacher which is billed Fagerberg Brothers? A. Yes, sir.

Q. When did Mr. Brown appear on the scene?

A. Some time in April, 1914.

Q. What position did he occupy?

A. He just merely came up there and introduced himself.

Q. What do you know of him in connection with the Carstens Packing Co.?

A. He had absolutely no authority from the Carstens Packing Co. He just came and introduced himself as Mr. Brown and said Mr. Carstens had sent him up there and he had no letter of introduction whatever.

Q. You found out afterwards that he represented the Carstens Packing Co.? A. Yes, sir.

Q. And then what position was he occupying?

A. He was supposed to be their representative.

Q. Do you know whether he was or not, positively?

(Testimony of J. A. Fagerberg.)

A. No, I could not state positively—I never have seen any written statement from the Carstens Packing Co., authorizing him as their representative.

Q. You know the Carstens shipped him goods?

A. Yes, sir. [248—230]

Q. And what became of those goods?

A. Part of them I took over there and part of them he has taken.

Q. Where did he take them?

A. To the Nizina store.

Q. Did he run the Nizina store as the Carstens agent?

A. He ran the Nizina store as the agent for me, he ran it under the Fagerberg Brothers, if I am not mistaken—he used the billheads or paper that was in the store there.

Q. You put him in there?

A. I sent him over there—I pulled him out of there for the reason that I wouldn't stand for \$150, when I could put a person in there for \$60 that would fill the position as well as he did.

Q. Were some of these goods for which the Carstens afterwards sued you on, billed to Brown, shipped to Brown and turned over afterwards to you? A. Yes, sir.

Q. How much was so billed to Brown and turned over to you by him?

A. Well, I have to make a guess at that.

Q. About how much?

A. I should judge in the neighborhood of \$750 or

(Testimony of J. A. Fagerberg.)

\$800, possibly more and it might be less.

(By Mr. RITCHIE.)

Q. Your answer in the action brought against you by the Carstens you admit an indebtedness of about \$4,000, don't you?

A. Yes, I practically admit that—I don't deny that.

Witness excused. [249—231]

[Testimony of E. E. Ritchie, for Defendant
(Recalled).]

Mr. E. E. RITCHIE (Recalled).

(By Judge LYONS.)

Q. When you left the witness-stand yesterday the understanding was that you were to produce any written instructions you had from either Mr. Wilt or Mr. Bunnell concerning the bringing of this suit entitled Carstens Packing Co. against J. A. Fagerberg—I will ask you if you have any of those letters and if so, produce them.

A. Yes, I found a letter written to me by Mr. Bunnell at Cordova. This is a long letter of five or six pages and there are some private matters in it, strictly confidential, on our side of the case, and on every page and I couldn't introduce that letter.

Mr. DONOHUE.—We have no desire that any part of the letter be introduced but if the letter is introduced, we want a chance to see that it covers every portion of this suit.

By the COURT.—What is the purpose of the letter at all, what difference does it make?

Mr. DONOHUE.—I don't know that it makes any

(Testimony of E. E. Ritchie.)

material difference, but the question came up; there is a contradiction in the two answers filed by the defendant in this case. In the first instance they alleged that when this property was attached, it was the property of J. A. Fagerberg, and H. M. Fagerberg if in possession of it was there as the agent or employee of J. A. Fagerberg; in the second amended answer they allege that it was partnership property and that the Carstens Packing Co. had no knowledge of the existence of the alleged copartnership between J. A. & H. M. Fagerberg until after they filed the suit and had the writ of attachment issued. Now, Mr. Ritchie went on the stand yesterday and explained how that allegation came in that amended answer and said I believe that he was instructed by Mr. Wilt to [250—232] bring the suit against Fagerberg Brothers but contrary to those instructions, he thought it safer to bring it against J. A. Fagerberg and that accounted for the way the suit was brought.

Mr. RITCHIE.—I am not going to offer the letter but I have here the complaint which Mr. Wilt and Mr. Bunnell sent for me to file. Mr. Donohoe asked for it yesterday. The letter I am not going to offer, or any part of it, because I cannot introduce all of it. I believe you asked for this memorandum; look at it.

Mr. DONOHOE.—I don't care to look at it unless it has the instructions with it.

Mr. RITCHIE.—It shows practically how I was instructed to bring the suit and I think I will offer it in evidence.

(Testimony of E. E. Ritchie.)

By the COURT.—I don't see that it makes any difference what Mr. Wilt or Mr. Bunnell thought, if Mr. Ritchie says he brought it under a misapprehension; he has stated that and testified to it. I don't see that it is any proof of partnership what Mr. Ritchie thought or Mr. Bunnell or any one else thought; it doesn't either prove or disprove a partnership—that matter must be proven in some other way.

Mr. RITCHIE.—The idea is to show that whatever contradictions there are in the pleadings was due to the Valdez attorney and I understood that Mr. Donohoe wanted to see the original complaint sent to me by Mr. Wilt and Mr. Bunnell.

Mr. DONOHOE.—No, you said you were instructed to bring the suit against Fagerberg Brothers and I said I wanted to see it.

By the COURT.—If you desire to inspect it and there is anything in it, you may do so.

Mr. DONOHOE.—I have no desire to inspect the complaint.

Mr. RITCHIE.—I understood that Mr. Donohoe wanted to see it if I had [251—233] it and it would show that it was a case of misjoinder and would have been thrown out of court if filed in that shape.

Witness excused.

[Testimony of J. A. Fagerberg, for Plaintiff
(Recalled).]

J. A. FAGERBERG, recalled for further cross-examination.

(By Mr. RITCHIE.)

Q. This is something you are not directly responsible for, but you can probably explain—in the various bills filed by creditors in your bankruptcy proceedings, I find here a claim of Rosenfeld-Rovig Company against Fagerberg Brothers, McCarthy—did you deal with them as Fagerberg Brothers?

A. You have the bill on the other statement, you can see the bills there.

Q. This is their own sworn statement?

A. I can show you the bills.

Q. Butler Brothers, New York, Chicago, St. Louis, Minneapolis, Dallas, from Minneapolis, Fagerberg Brothers, McCarthy, Alaska, bought about October 14th. These are the verified claims, verified under the bankruptcy law. B. F. Goodrich Rubber Co.—Fagerberg Brothers, McCarthy, Alaska.

A. Hamshaw ordered that and I never gave any instructions regarding that.

Q. After seeing that, I want to know whether or not you did business with them as Fagerberg Brothers.

A. Goodrich—I never gave them any orders; Hamshaw ordered those boots.

Q. Do you know how they got the name Fagerberg Brothers?

(Testimony of J. A. Fagerberg.)

A. No, I haven't the slightest idea. [252—234]

(By Mr. DIMOND.)

Q. I drew up the answer for you filed in the case of Carstens Packing Co. versus J. A. Fagerberg?

A. Yes.

Q. And that answer was drawn by me after you told me all your story, practically as you have related it on the stand, of your relations with these people? A. Yes, sir.

Q. Well, the way you came to admit that indebtedness against you by the Carstens Packing Co. and your waiver of any attempt to hold them legally in the partnership was upon my advice from the statement of what you told me at that time, that you couldn't, in a court of law, hold them for the partnership, inasmuch as you had no sufficient writing to show they were a partner of yours? A. Yes, sir.

Witness excused.

Mr. DONOHOE.—That is our case.

By the COURT.—In regard to the pleadings it seems to me that if either the defendant in this case or the plaintiff is dissatisfied with the state of the pleadings, the proper way would be to meet it by a motion to amend and not show by evidence in this case that the attorney was misinformed as to the facts.

Mr. RITCHIE.—That probably would have been a little better procedure. The reason we did that was that Mr. Donohoe, on taking the deposition of Mr. Thomas Carstens, on cross-examination, asked a lot of questions about that and we thought it was

only fair to make our explanation that Mr. Carstens never had any information regarding the pleadings and knew nothing about them. [253—235]

Stipulation to Take Depositions.

DEFENSE—CONTINUED.

Mr. LYONS.—This testimony was all taken by deposition in Seattle according to the following stipulation, which I will read to you:

*In the District Court for the Territory of Alaska,
Division Number Three.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal for the
Third Division of the Territory of Alaska,
and JAMES M. MILLSAP, Deputy United
States Marshal for the Third Division of the
Territory of Alaska,

Defendants.

IT IS HEREBY STIPULATED AND AGREED
by and between all of the parties to the above-en-
titled action, by their respective attorneys, that the
depositions of Thomas Carstens, W. C. Prater, Her-
man Meyer, Alex. Wilson and Henry Wolf may be
taken at the offices of Lyons & Orton, in the Alaska
Building, at the City of Seattle, State of Washington,
on the 21st day of January, 1915, before B. A. North-
rup, a notary public for the State of Washington,
commencing at the hour of 2:00 o'clock P. M., and
continuing until all of said depositions are taken;

that such depositions may be taken upon oral interrogatories propounded by the counsel at the time; that when such depositions are taken they shall be forwarded to the clerk of the above-entitled court at Valdez, Alaska, and that said depositions may be read in evidence by either of the parties hereto on the trial of the above-entitled action, subject only to objections on account of incompetency, irrelevancy and immateriality.

Dated at Seattle, Washington, this 20th day of January, 1915.

A. J. DIMOND,

T. J. DONOHUE,

Attorneys for Plaintiff.

LYONS & RITCHIE and

LYONS & ORTON,

Attorneys for Defendants. [254—236]

*In the District Court for the Territory of Alaska,
Division Number Three.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal for the
Third Division of the Territory of Alaska,
and JAMES M. MILLSAP, Deputy United
States Marshal for the Third Division of the
Territory of Alaska,

Defendants.

Depositions [of W. C. Prater et al.].

BE IT REMEMBERED that, pursuant to the Stipulation hereunto annexed, and on the 21st day of January, 1915, at Seattle, in the County of King, State of Washington, before me, B. A. Northrup, a Notary Public in and for the said County of King, personally appeared Thomas Carstens, W. C. Prater, Herman Meyer, Alex. Wilson, and Henry Wolf, witnesses, produced on behalf of the defendants in the above-entitled action, now pending in the said court, who, being by me first duly sworn, were then and there examined and interrogated by Mr. Thomas R. Lyons, of counsel for the defendants, and T. J. Donohoe, of counsel for the said plaintiff, and testified as follows:

Mr. LYONS.—I will first read the deposition of Mr. W. C. Prater.

[Deposition of W. C. Prater, for Defendants.]

Q. State your name and place of residence?

A. W. C. Prater—1624 Third West, Seattle.

Q. What is your occupation?

A. I am secretary and treasurer of the Carstens Packing Company.

Q. How long have you lived in the City of Seattle?

A. About ten years.

Q. How long have you been secretary and treasurer of the Carstens Packing Company?

A. About that length of time—about eight or ten years.

Q. Are you acquainted with Thomas Carstens?

A. I am. [255—237]

(Deposition of W. C. Prater.)

Q. He is a member of the firm of Carstens Packing Company?

A. Yes, he is president of the company.

Q. How long has he been president of the Carstens Packing Company? A. Since its organization.

Q. How long is that, or do you know?

A. Incorporated in 1904.

Q. 1894 or 1904? A. 1904.

Q. Do you know J. A. Fagerberg? A. I do.

Q. How long have you known him?

A. I have known him since I have been with the Company, about ten years.

Q. Do you know H. M. Fagerberg? A. I do not.

Q. Do you know when J. A. Fagerberg became interested in the store at Chititu, which was owned by the Nizina Trading Company?

A. In August, 1907.

Q. Do you know of your own knowledge under what circumstances he became identified with that store?

A. Yes, Mr. Alex Wilson had been in charge of the store.

Q. For whom?

A. For the Nizina Trading Company.

Q. Who were the owners of the Nizina Trading Company?

A. At what time, Judge, prior to 1907?

Q. Yes, prior to 1907?

A. Mr. Thomas Carstens and Mr. Herman Meyer were the stockholders at that time.

Q. Do you know what the Nizina Trading Com-

(Deposition of W. C. Prater.)

pany had at that point—at Chititu?

A. It had a large stock of goods. [256—238]

Q. Goods, wares and merchandise? A. Yes.

Q. Do you know what arrangements were made between J. A. Fagerberg and the Nizina Trading Company with reference to that store and all the merchandise contained therein?

A. The arrangements were that it was to be turned over to him by Herman Meyer; my understanding is that the store was turned over to Fagerberg under the same terms and arrangements that Wilson had previously had charge.

Q. What were these arrangements?

A. Those arrangements were that he was to have the equivalent to \$1,500.00 per year for carrying on the store.

Q. Do you know whether or not the Nizina Trading Company, in August, 1907, made an actual transfer of the store and the merchandise contained therein, to J. A. Fagerberg?

A. It was inventoried on August 12, 1907, by Alex Wilson and H. M. Fagerberg.

Q. Do you know whether or not after that inventory was made, there was a bill of sale made by the Nizina Trading Company to J. A. Fagerberg?

A. There was, later on.

Q. Do you know of your own knowledge whether or not the bill of sale was intended to convey to him an ownership or merely to transfer the legal title to him so that he could operate the store as his own?

A. Just for the purpose of him operating the store,

(Deposition of W. C. Prater.)

and so as to change the name of the store in the eyes of the public.

Q. Did you ever induce or attempt to induce J. A. Fagerberg to acquire the store?

A. I never did. [257—239]

Q. Did you ever have any conversation with him about the purchase of that store?

A. Not until after he had taken possession.

Q. That store is situated where—at Chititu?

A. I really cannot say, as I have never been on the ground.

Mr. DONOHOE.—We admit that it is situated at Chititu, the Territory of Alaska.

Q. Now, in July of 1913 did you have any conversation with J. A. Fagerberg with reference to that store and the roadhouse at Blackburn? A. I did.

Q. Where did you have that conversation?

A. At our office in Seattle.

Q. What do you mean by “our” office?

A. The office of the Carstens Packing Company.

Q. Who were present at that conversation?

A. Myself and J. A. Fagerberg.

Q. State the conversation you had with him at that time?

Plaintiff objects to this question as it in no way tends to bind H. M. Fagerberg, it being shown that he was not present, and no authority shown to J. A. Fagerberg to in any manner bind him.

By the COURT.—The objection will be overruled and plaintiff allowed an exception.

A. He came to our office and said he wanted to give

(Deposition of W. C. Prater.)

a bill of sale on all of his property in Alaska to me, and wanted to do it quick.

Q. To whom?

A. To me personally. He wanted I should hold the title until he got settled with his wife; he was afraid his wife would attach it or start some proceedings and tie it up. I told him that [258—240] he did not owe me anything and I could not legally hold it, and I would not accept it, as it would only get us into litigation, and would not be binding anyway, and I suggested that he owed Mr. Carstens, and to give the bill of sale to Thomas Carstens. He hesitated a while and then decided to give the bill of sale to Thomas Carstens. Mr. Wilt is our attorney and generally looks after such matters for us; he is employed exclusively for the company, and he was at that time in the east, and would be back on the 17th, and I asked Fagerberg to delay the matter for a couple of days until Mr. Wilt returned and could fix it up for us without going to another attorney. He said he would, so he went away and Mr. Wilt returned in a few days, and I called him up and called his attention to the matter, and he said we would have to get in touch with Fagerberg and get that bill of sale right away, so I made an effort to locate him and found he had left the city.

Q. Fagerberg had left the city?

A. Yes. He was dodging his wife, expecting her to have him arrested at any time for defaulting in his payment of alimony and put him in jail, and he had hid at La Conner, and Mr. Wilt made a trip up there

(Deposition of W. C. Prater.)

and spent a day there, but failed to catch him; he dodged him; he got wind of some one looking for him and he skipped and Wilt came back to Seattle and took the matter up with Mr. Custer, his brother-in-law.

Mr. DONOHOE.—I understood the question to ask for a conversation that took place at a certain time. I object to this answer as not responsive to the question.

By the COURT.—It goes a little perhaps beyond a strict response, but it may stand. Objection overruled; plaintiff allowed an exception.

Q. You have stated, have you, all of the conversation that you had [259—241] with Mr. Fagerberg the first time with reference to his desire to transfer all his property in Alaska to you?

A. Yes, that was the substance of the conversation, —I was getting to it.

Q. That conversation was held on what date and where?

A. On July 15th, in the office of Carstens Packing Company.

Q. Did you have any other conversation with Mr. Fagerberg relative to this same matter?

A. Not that day.

Q. That day or any succeeding day?

A. If I can go on where I left off—

Objection withdrawn.

A. Mr. Custer got in touch with Mr. Fagerberg, and he objected to meeting Mr. Wilt, but was willing to meet me and Mr. Custer and named Everett as the

(Deposition of W. C. Prater.)

place to meet, so we met him the following day at Everett—I don't remember what hotel, some hotel in Everett, and we went over this matter of the bill of sale, and Fagerberg stated that he had already given a bill of sale to his brother, Harry Fagerberg.

Q. Did he state when he had given that bill of sale to Harry? A. Yes.

Q. Harry is H. M. Fagerberg, is he not?

A. Yes.

Q. Did he state why he had given that bill of sale to his brother?

A. He told us that he had given the bill of sale to his brother, and I asked him if it would not be possible for him to get it transferred or get Harry to give it to Carstens, and he said he could get it by going back to Alaska, and I suggested that he and Mr. Custer go to Tacoma with me and get Mr. Carstens and Mr. Wilt, and try to get the matter straightened out. He [260—242] objected to going to Tacoma, saying the reason was that he was afraid to go through Seattle, for fear he would be arrested, and I convinced him that Seattle was such a big place that he would be able to get through without much difficulty, so he came along, and we went to Tacoma and took the matter up with Mr. Carstens; and the matter of sending Mr. Custer to Alaska was brought up; as Mr. Custer is an attorney and some legal matters might come up—some legal points to settle—

Q. Who was present at that conversation?

A. Mr. Wilt, Mr. Custer, Mr. Carstens, Mr. Fagerberg and myself.

(Deposition of W. C. Prater.)

A. —And Mr. Carstens asked Mr. Custer what he would go for, and he said \$250.00 per month and his expenses, and they talked along for a while, and then Mr. Carstens said that Fagerberg should furnish an inventory, and he said he had an inventory in his house in Seattle, and Mr. Carstens said he would like to see it, and we would go to Seattle that night and he and Custer would go back to Tacoma the next day and decide on the steps to take, so we came to Seattle that night and Fagerberg and Custer went back to Tacoma the next day, and settled on sending Fagerberg.

Q. J. A. Fagerberg?

A. Yes. Mr. Carstens sent me a note to purchase Fagerberg's transportation on a certain boat that was to leave that night, and I bought and paid for his ticket, and at about eight o'clock that night—the boat was to leave at nine—he called me up. I was at the Rainier Club, and he said he was afraid to go to Alaska unless we would agree to pay his back alimony in case they arrested him up there and he would have to pay or go to jail. I told him that was a matter Mr. Carstens would have to settle, for him to go to our office in Seattle, 522-4 First South, and we had a private line to Tacoma, and call up Mr. Carstens from there, and he would give him an answer on that [261—243] question. The next day the ticket was returned.

Q. What ticket do you mean?

A. The ticket for his transportation to Cordova.

Q. When was that?

(Deposition of W. C. Prater.)

A. I could not say just what month it was in, it was after the 15th of July, but how many days I could not say without consulting the books—they will probably show when the check was issued.

Q. In that conversation between you, Fagerberg, Wilt, Carstens and Custer, at Tacoma, did Fagerberg say anything with reference to why he executed a bill of sale conveying all of his property in Alaska to H. M. Fagerberg?

Objected to by plaintiff on the ground that the question is leading. The question should be to state the whole conversation. Question withdrawn.

Q. State whether or not there was anything said by Fagerberg at that time in Tacoma, with reference to why he executed the bill of sale to Harry or H. M. Fagerberg, in which he conveyed all his property in Alaska to him?

Plaintiff makes same objection as to previous question. Objection overruled. Plaintiff allowed an exception.

A. He stated that the bill of sale was made to his brother for the sole purpose of keeping his wife from getting hold of the property.

Q. When he stated that he would go to Alaska for the purpose of getting H. M. Fagerberg to transfer all of the property covered by that bill of sale to the Carstens Packing Co. or to Thomas Carstens, what did he say with reference to whether or not he could accomplish that purpose?

A. He stated that he was positive he could get the transfer made. [262—244]

(Deposition of W. C. Prater.)

Q. Did you see J. A. Fagerberg in 1911 when he was in Seattle? A. Yes.

Q. What time was that?

A. It was—I think it was along in February, 1911.

Q. Did you have any conversation with him at that time with reference to the store at Chititu?

A. I did.

Q. What was that conversation?

A. He came to the office and said he was not satisfied with the conditions in the way he was operating there, and he did not think it was satisfactory to the company.

Q. To what company?

A. The Carstens Packing Company, or Thomas Carstens. He would like to know where he stood as to the Nizina store, so he would be in a position to handle it as he ought. I asked him if he did not want to buy the store; he said he would buy it, and I asked him what the stock was worth, and he said it was probably worth more than he would give for it, and I asked him what he would give, and he said \$10,000.00, but we would have to trust him for it. I immediately called up Mr. Carstens, and he said to have Mr. Fagerberg come to Tacoma, and he went to Tacoma the next day. What they did I really could not say, as I was not present.

Q. Do you know whether or not he ever paid Mr. Carstens anything, or paid the Carstens Packing Company anything, for the Chititu store that was delivered to him in 1907?

Plaintiff objects to this question on the ground

(Deposition of W. C. Prater.)

that it is not within the issues joined in this suit, and not binding on the plaintiff, and incompetent, irrelevant and immaterial. Objection overruled. Plaintiff allowed an exception. [263—245]

A. Not one cent.

Q. I hand you what purports to be a statement of account for the J. A. Fagerberg store at McCarthy, Alaska, from the Carstens Packing Company, and would ask you to examine it and state what it is.

A. It is a statement of account against J. A. Fagerberg.

Q. State whether or not that account is a correct statement of the account between Fagerberg and the Carstens Packing Company for the time therein stated, to wit, from March 10th, 1914, to May 1st, 1914, inclusive.

A. It is, to the best of my knowledge.

Q. Has any part of it been paid? A. No.

Q. The whole amount named therein is now due from Fagerberg to the Carstens Packing Company?

A. It is.

Q. What amount is shown to be due by that statement from Fagerberg to the Carstens Packing Company? A. \$4,022.75.

Defendants offer statement in evidence, marked exhibit "A." Objected to by plaintiff as not binding on the plaintiff in this action, as no evidence shows that the plaintiff herein is in any way responsible for the bill of goods set out in the statement offered.

By the COURT.—It is not claimed by the plaintiff here that it was property assigned to him?

(Deposition of W. C. Prater.)

Mr. DIMOND.—No.

Objection overruled. Plaintiff allowed an exception.

Exhibit “A,” attached to the deposition, reads as follows:

[Exhibit “A” to Deposition of W. C. Prater.]

Mr. J. A. Fagerberg,

McCarthy, Alaska.

Debtor to

CARSTENS PACKING COMPANY,

Tacoma, Wash. [264—246] July, 1914.

1914.

March 10.	Draft for freight paid at Tacoma.....	1506.15
March 19.	Merchandise from West Coast Gro. Co., Tacoma.....	225.32
March 19.	Merchandise from Tacoma Grocery Co., Tacoma.....	234.23
March 19.	Merchandise from Northwest Gro. Co.,.....	131.18
March 19.	Freight from Tacoma to McCarthy... ..	276.23
March 19.	5% Buying charge Tacoma....	29.54
March 10.	Meat & Provisions from C. P. Co. from Seattle....	324.20
March 20.	Meat & Provisions from C. P. Co. from Seattle.....	576.03
March 21.	Freight paid on Meat, etc., from Seattle	119.59
Apr. 17.	Meat received from L. A. Brown agt. C. P. Co.....	198.78

(Deposition of W. C. Prater.)

Apr.	17.	Freight paid on shipment Apr. 17 from Seattle.....	67.60
May	6.	Meat & Provisions recd. from L. A. Brown, agt. for C. P. Co.	240.45
May	29.	Meat & Provisions recd. from L. A. Brown, agt. for C. P. Co... ..	127.94
June	12.	Meat & Provisions recd. from L. A. Brown, agt. for C. P. Co.	78.74
May	1.	Oil, Flour & Cheese recd. from L. A. Brown, agt. for C. P. Co.	34.99
			<hr/> 4170.97

CREDITS.

Apr.	20.	Paid to Seattle House C. P. Co.	105.00
		By cash to L. A. Brown, Agent.	25.00
May	1.	By 7 slabs bacon 74 3/8 at 24 1/2¢ per lb.....	18.22
			<hr/> 4022.75

This statement made by Mr. Wilt and accepted by Mr. Fagerberg.

Q. When you sent the bill of goods described in that statement to Fagerberg, did you know whether or not H. M. Fagerberg and J. A. Fagerberg were partners? A. I understood they were.

Plaintiff moves to strike this answer, as calling for a conclusion of the witness, and not stating a fact.

(Deposition of W. C. Prater.)

By the COURT.—I think the answer should be stricken out.

Defendants allowed an exception to the ruling.

Q. Well, did you have any evidence or have you learned since of any facts which lead you to believe that they were partners during all of the time that J. A. Fagerberg was in business at Chititu and Blackwell?

Plaintiff objects to this question on the ground that an answer in the affirmative would be a positive and complete contradiction to defendants' answer in which it is set out that Carstens Packing Company had no knowledge of the alleged copartnership [265—247] existing between J. A. and H. M. Fagerberg until some time subsequent to the 31st day of July, 1914.

Objection overruled. Plaintiff allowed an exception.

Q. Answer the question if you can.

A. I answered it—that personally I understood they were working together.

Plaintiff moves to strike as stating a conclusion of the witness and not a fact.

Motion sustained—answer stricken. Defendants allowed an exception to the ruling.

Q. Why was it that you billed the goods to J. A. Fagerberg and not Fagerberg Brothers?

A. Simply because the account was started that way years ago, and was never changed.

Q. Did J. A. Fagerberg state to you at the time that the Nizina Trading Company was turned over

(Deposition of W. C. Prater.)

to him, as follows: "I will take hold of the store as a personal favor for you, and see what I can do with it, but I won't guarantee that I can bring you one red cent out of this stock; I will not be responsible myself." Did he ever make such a statement to you, or its substance?

A. Nothing whatever, as I had nothing whatever to do with the turning over of the stock.

Q. When J. A. Fagerberg had the conversation with you on the 15th day of July, 1913, with reference to the transfer of his property in Alaska to you, did he state, "I want you to take care of Harry and I will give you a bill of sale for the works up there," and you said "Nothing doing," to which he said, "All right, I will give it to Harry then, and that settles it"?

Plaintiff objects to this question on the ground that it is leading, and on the further ground that it is in no way binding [266—248] upon the plaintiff in this case, and third, that the testimony from which counsel is reading is not testimony in this case, and therefore cannot be used for impeaching witness.

Objection overruled. Plaintiff allowed an exception.

A. He made no such statement.

Q. Did he say anything at that time about your protecting Harry in any way in connection with the issuance of the bill of sale to you?

A. No, sir, he did not.

Q. Is there anything else you desire to state with reference to this matter at this time, Mr. Prater?

(Deposition of W. C. Prater.)

A. I cannot recall anything just now.

Plaintiff moves to strike the entire testimony of this witness as incompetent, irrelevant and immaterial, and has not force in any way to bind the plaintiff in this action.

Objection overruled. Plaintiff allowed an exception.

Cross-examination.

(By T. J. DONOHOE, Attorney for Plaintiff.)

Q. Mr. Prater, when did you first become acquainted with J. A. Fagerberg?

A. About ten years ago, or something like that.

Q. Have you at any time met the plaintiff in this action, H. M. Fagerberg?

A. Not to my knowledge.

Q. You never had any conversation with him at any time in regard to the business out of which this suit has grown?

A. I have never met him, therefore have had no such conversation.

Q. How was this account carried on the books of the Carstens Packing Company?

A. J. A. Fagerberg. [267—249]

Q. How were the various goods shipped—in whose name? A. His name.

Q. J. A. Fagerberg's name? A. Yes.

Q. In February, 1913, the Carstens Packing Company commenced a suit against J. A. Fagerberg in King County, Washington, and recovered a judgment against him for \$2600.00, did it not?

A. Yes, sir.

(Deposition of W. C. Prater.)

Q. That suit was brought in the name of J. A. Fagerberg? A. Yes.

Q. Individually; H. M. Fagerberg of Fagerberg Brothers did not appear in the suit? A. No, sir.

Q. When was that stock of goods taken over from the Carstens Packing Company by J. A. Fagerberg—the stock of goods at Chititu?

A. August 12, 1907, it was inventoried.

Q. That is the time he took possession of it, so far as you know?

A. I have never been in that section of Alaska. It is the time so far as I know.

Q. Is it not a fact that when Fagerberg took over that stock of goods—J. A. Fagerberg—that he was authorized to do the best he could with the store, and there was no set figure as to the division of the profits, if there was any, between the Carstens Packing Company and J. A. Fagerberg?

A. He never had any such instructions from me.

Q. Did he do all the business with you?

A. With me or Mr. Carstens or Mr. Meyer.

Q. Herman Meyer?

A. Yes—or with Mr. Rines. He was our auditor at that time.

Q. What were the terms, so far as you know, under which J. A. Fagerberg took over the store at Chititu?
[268—250]

A. Now, my understanding was that he took over the store under the same terms as Alex. Wilson, whom he succeeded, had it.

Q. But that does not give us any information.

(Deposition of W. C. Prater.)

What were the terms he took it over on—under what terms did Mr. Wilson have it?

A. Mr. Wilson was to get a salary of \$1,500.00 a year, and he was to sell the goods and report to us.

Q. How often was he to report?

A. As often as was convenient; he usually reported every six months, or about that.

Q. You were with the Carstens Packing Company during the year ending July or August, 1907?

A. Yes.

Q. Mr. Wilson reported to you during that year, in August, 1907?

A. He turned the goods over on August 12th.

Q. Did he report for the year ending August 12, 1907? A. As soon as he got out he reported.

Q. Is it not a fact that Mr. Wilson decided that he could not take in money enough out of that store to pay his salary?

A. I could not say as to that; but Mr. Wilson is here and can testify himself.

Q. You, as treasurer of the Carstens Company, do you not know that you had to issue a check to pay Wilson's salary or a part of it, at that time?

Defendants object to any testimony concerning what Mr. Wilson made out of the business, as incompetent, irrelevant and immaterial and not cross-examination.

Objection overruled. Defendants allowed an exception.

A. I have no recollection of issuing such a check.

Q. Now, when did Mr. Fagerberg make the first

(Deposition of W. C. Prater.)

report to your company? [269—251]

A. He never reported in writing.

Q. When did he make his first report?

A. The first time he was out.

Q. Did he report to you?

A. He talked the matter over with me, Mr. Carstens and Mr. Rines; he did most of the business as to the account—he talked with Mr. Rines, the auditor.

Q. Where is Mr. Rines now?

A. He is up in Victoria.

Q. And he continued from August 12, 1907, to handle that store, for how long?

A. I think he is still handling it, what there is left of it.

Q. When you obtained the judgment against J. A. Fagerberg in the spring of 1913 for \$2,600.00, was that a complete settlement of what J. A. Fagerberg at that time owed the Carstens Packing Company?

A. That is what he owed the Carstens Packing Company. The Nizina Trading Company was a separate corporation, but I think they allowed the corporation to die a natural death; it was not the property of the Carstens Packing Company, but of Thomas Carstens.

Q. But I understand that this business the Nizina Trading Company had—or Carstens and Meyer—was never the property of the Carstens Packing Company?

A. It belonged to Carstens and Meyer, but I think Meyer turned it all over to Carstens. I would say in

(Deposition of W. C. Prater.)

regard to that judgment, that the suit was brought at the request of Mr. Fagerberg, for the purpose of trying to set aside a deed to a piece of property he had deeded to his wife, in Seattle, deeded to her to defeat his creditors.

Q. To begin back again, Mr. Prater; the Carstens Packing Company, [270—252] a corporation, has never been the owner of the store and stock of goods at Chititu? A. It never has.

Q. Now, to make that clear: the stock of goods that was turned over to J. A. Fagerberg on August 12th, 1907, was not then and never has been the property of the Carstens Packing Company?

A. No, sir, but it owed the Carstens Packing Company more than the stock of goods was worth.

Plaintiff at this time moves to strike all the testimony regarding the stock of goods at Chititu Creek, and the turning over of it to J. A. Fagerberg, on the ground that the Carstens Packing Company has never had any ownership of these goods, and were never the owners, and were not the parties who turned the goods over to J. A. Fagerberg.

Motion denied. Plaintiff allowed an exception.

Q. Now, in the spring of 1913, you recovered a judgment against J. A. Fagerberg for what—what were these goods?

A. That was for cattle furnished him, and \$700.00 cash.

Q. By the Carstens Packing Company?

A. Yes.

Q. And the Carstens Packing Company obtained

(Deposition of W. C. Prater.)

judgment against him? A. Yes, sir.

Q. In the summer of 1913 your company, Carstens Packing Company, and J. A. Fagerberg, had some other transactions, did they not—regarding the purchase of a stock of goods to be sent up to Alaska?

A. In 1913?

Q. 1913 or 1914. A. In the spring of 1914.

Q. Now, that stock of goods that you sent in the spring of 1914, [271—253] to J. A. Fagerberg, amounted to something over \$4,000, did it not?

A. Yes.

Q. Now, what were the arrangements under which the Carstens Packing Company sold this stock of goods to J. A. Fagerberg?

A. I am not familiar with these arrangements; they were between Mr. Fagerberg, Mr. Carstens and Mr. Wilt.

Q. Do you know anything of a proposition regarding the organization of a corporation by Thomas Carstens and J. A. Fagerberg, to put in a trading station between Blackburn and the Shushana mining region?

A. I have no personal knowledge of it. I have heard that such an organization was proposed, but I was never present at any conversations regarding it.

Q. Is it not a fact that the Carstens Packing Company, or yourself, or Mr. Thomas Carstens, sent J. A. Fagerberg to Alaska in the fall of 1913 or early in 1914 to obtain from H. M. Fagerberg a redeed of bill of sale of your property, to be organized into a corporation, and H. M. Fagerberg was to receive

(Deposition of W. C. Prater.)

stock to the amount of \$7,000, for his interest in the business?

A. I could not say anything as to such an arrangement.

Q. You know nothing at all about that? A. No.

Q. Do you know, or did you learn through your position with the Carstens Packing Company that in 1913 S. Blum & Company held a mortgage on all of the property that was turned over to H. M. Fagerberg?

Defendants object on the ground that it is incompetent, irrelevant and immaterial, and not cross-examination.

Objection overruled. Defendants allowed an exception.

A. I heard he had some kind of a claim—I don't think he had a [272—254] mortgage, but the arrangement was that he was to receive the rents from the roadhouse to apply on what Fagerberg owed him. I never heard he had a mortgage.

Q. You knew there was a large indebtedness against this property when Harry Fagerberg took it over?

A. What property do you refer to?

Q. All the property that bill of sale and deeded to Harry Fagerberg in 1913?

A. I knew he owed Blum by his own statement, but how much I could not say.

Q. Now, when did you send Mr. Fagerberg to Alaska for the purpose of getting him to obtain

(Deposition of W. C. Prater.)

from H. M. Fagerberg a reconveyance of this property?

Q. We never sent him. We arranged to send him, but he did not go.

Q. He never went up there for that purpose at all?

A. Not to my knowledge.

Q. To whom of your company did Mr. Fagerberg talk over details? A. Mr. Wilt and Mr. Carstens.

Q. Then Mr. J. A. Fagerberg was mistaken when he testified in his bankruptcy proceedings that all his conversations had with reference to the business transaction with Carstens Packing Company was had with you? A. Beyond a doubt.

Q. Did you ever hear of a certain agreement entered into on the 22d day of March, 1914, between J. A. Fagerberg and H. M. Fagerberg and Thomas Carstens regarding the property that was attached last fall by the Carstens Packing Company?

A. I know nothing of such an agreement.

Q. You knew nothing of that—never heard of it?

A. No. [273—255]

Q. When was your last conversation with J. A. Fagerberg with reference to your Alaskan transactions?

A. My last conversation with him was the time he called me at the Rainier Club over the phone.

Q. What month and year was that?

A. In July or August, 1913.

Q. Now, previous to the sending of this last bill of goods amounting to something over \$4,000, to J. A. Fagerberg, the Carstens Packing Company had

(Deposition of W. C. Prater.)

actual knowledge, did they not, that this property had been transferred to H. M. Fagerberg by J. A. Fagerberg A. When was that?

Q. Previous to sending this last bill of goods sent between March and July, 1914?

A. We had his own statement to that effect.

Q. J. A. Fagerberg's statement that about a year previous to this time he had transferred all his Alaska property to H. M. Fagerberg? A. Yes.

Q. Is it not a fact that the reason you did not take the bill of sale of this property in the spring of 1913 from J. A. Fagerberg was because you knew that Blum had a \$6,000 mortgage on the property?

A. It was simply for the reason that J. A. Fagerberg did not owe me anything, and he did owe Thomas Carstens, and he should be the one to have the bill of sale, and he agreed to give it to Mr. Carstens.

Q. As trustee for the Carstens Packing Company?

A. To Mr. Carstens personally.

Q. He owed the Carstens Packing Company, did he not?

A. He owed the Carstens Packing Company at that time, and he also owed for the old Nizina store to Thomas Carstens. [274—256]

Q. How do you know he owed it to Thomas Carstens—how do you know that?

A. It was the Nizina Trading Company—it belonged to that corporation and Thomas Carstens and Henry Meyer were the stockholders

Q. Which of the officers of your corporation auth-

(Deposition of W. C. Prater.)

orized and directed the bringing of the suit in the Alaska Courts in the Third Division last July, entitled Carstens Packing Company against J. A. Fagerberg?

Objected to as irrelevant, incompetent and immaterial and not cross-examination.

Objection overruled. Defendants allowed an exception.

A. That matter was handled by Mr. Wilt, our attorney, acting on behalf of the company. I suppose he got his orders from Mr. Carstens.

Q. He got no orders from you?

A. Why, we might have talked the matter over, the same as any attorney would do.

Q. And Fagerberg Brothers and H. M. Fagerberg were not parties to that suit?

A. That I would not say. The records would show.

Witness excused.

(Signed) W. C. PRATER.

By the COURT.—Was there a deed from Herman Meyer or Thomas Carstens or the Nizina Trading Company to J. A. Fagerberg in 1907?

Mr. DONOHOE.—A bill of sale. [275—257]

By the COURT.—Was that introduced here in evidence?

Mr. DONOHOE.—I think so—we intended to introduce it.

Q. (By the COURT.) Was it recorded?

Mr. DIMOND.—Yes, sir; this is a certified copy—we will offer it in evidence now. I think all the

(Deposition of W. C. Prater.)

parties agree that this bill of sale was given at that time.

The bill of sale is admitted without objection, marked Plaintiff's Exhibit "I" and reads as follows:

Plaintiff's Exhibit "I" [Bill of Sale].

No. 5667.

KNOW ALL MEN BY THESE PRESENTS: That the Nizina Trading Company, a corporation organized under the laws of the State of Washington, the party of the first part, for and in consideration of the sum of One (1) Dollars lawful money of the United States of America, to us in hand paid by J. A. Fagerberg of Seattle, Washington, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey until the said party of the second part his executors, administrators and assigns;

All of the property, goods, wares and merchandise in and about its store buildings on Chititu Creek, Alaska; Also all of the goods, wares and merchandise stored at the Tonsina Bridge Road House with Jake Nafstedt, Tonsina post office, Alaska.

All of the above mentioned property now belonging to and being the property of the first party.

TO HAVE AND TO HOLD the same to the said party of the second part, his executors, administrators and assigns, forever. And — do — for — heirs, executors and administrators, covenant and agree to and with the said party of the second part, his executors, administrators and assigns, to warrant and defend the sale of the said property, goods and

chattels hereby made unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, we have hereunto set our hand and seal the fifth day of June in the year of our Lord one thousand nine hundred and seven.

NIZINA TRADING COMPANY,

By HERMAN MEYER, (Seal)

Treasurer and Genl. Manager.

Signed, sealed and delivered in presence of
WALTER CARSTENS,
W. C. PRATER.

[276—258]

State of Washington,
County of King,—ss.

On this 5th day of July, A. D. 1907, before me, personally appeared Herman Meyer, known to me to be the treasurer and General manager of the —— Corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

LEROR V. NEWCOMB,

Notary Public in and for the State of Washington,
residing at Seattle.

The above instrument was filed for record at 10 o'clock A. M. July 22, 1907.

JOHN LYONS,
U. S. Commissioner.

Mr. LYONS.—I will now read the deposition of Alex Wilson.

[Deposition of Alex Wilson, for Defendant.]

Direct Examination of ALEX WILSON, Conducted
by THOMAS R. LYONS, Attorney for Defendants.

Q. State your name and place of residence?

A. Alex Wilson, 2304 First Avenue, Seattle.

Q. Did you at one time live in Alaska?

A. Yes, sir.

Q. You are acquainted with the Nizina Trading Company? A. Yes, sir.

Q. And with Thomas Carstens and Herman Meyer? A. Yes, sir.

Q. Are you familiar with the store that was owned and operated by the Nizina Trading Company at Chititu, Alaska? A. Yes, sir.

Q. What position did you hold under that company at one time?

A. Well, I run the store, general care taker, salesman, and all around man. [277—259]

Q. How long did you serve in that capacity with the Nizina Trading Company?

Plaintiff objects to any testimony being offered in this case regarding the store at Chititu, Alaska, for the reason that the secretary and treasurer of the Carstens Packing Company had admitted on the stand that Carstens Packing Company never at any

(Deposition of Alex Wilson.)

time had any ownership or interest in the Chititu, Alaska, store. Objection overruled. Plaintiff allowed an exception.

A. About four years, maybe nearly five.

Q. To whom did you turn the store over when you discontinued? A. To H. M. Fagerberg.

Q. Did you and H. M. Fagerberg take an inventory of what was in the store? A. Yes, sir.

Q. Can you state without referring to the inventory, what it inventoried at?

A. No, because I never looked at the thing for seven years until this morning.

Q. Who authorized you to turn the store over to H. M. Fagerberg? A. Herman Meyer.

Q. Which one of the Fagerberg Brothers did he authorize you to turn it over to?

A. J. A. Fagerberg.

Q. Then how did you happen to turn it over to H. M. Fagerberg?

A. He came out there with a note from J. A. Fagerberg, authorizing me to turn it over to him.

Q. When did you turn over the store and all the merchandise contained therein to Fagerberg?

A. It was in August, but I do not know when, of 1907.

Q. What arrangements did you have with the Nizina Trading Company in regard to compensation?
[278—260]

A. \$1,500.00 a year, \$100.00 during the winter and \$150.00 during the summer months.

Q. And you were to account to them for all sales

(Deposition of Alex Wilson.)

and disbursements made? A. Yes, sir.

Q. To the Nizina Trading Company?

A. Yes, sir.

Q. Now, *along the* other articles of merchandise that were in the store when you turned it over to Fagerberg, were there any furs there?

A. Yes, sir.

Q. Of what value were they?

A. They were of considerable value when I left there; furs were getting to be very valuable.

Q. What would you say the value of all the furs was? A. Not less than \$4,000.00.

Q. State what was the opportunity at that time to convert that property into cash.

A. None whatever, because we could not carry them out of that country at that time of the year, or I would have brought them out.

Q. Do you know whether or not these furs were brought out during that winter and sold?

A. I do not know.

Q. State whether or not you took any furs out with you from the Nizina Trading Company store, to Seattle? A. Yes.

Q. How many? A. A very few, five or six.

Cross-examination Conducted by Mr. T. J. DONOHOE, Attorney for the Plaintiff. [279—261]

(Read by Mr. DIMOND.)

Q. You were put in charge of that store by the Nizina Trading Company, were you? A. Yes.

Q. You made all reports to the Nizina Trading Company, did you not? A. Yes, to the manager.

(Deposition of Alex Wilson.)

Q. Herman Meyer? A. Yes.

Q. You took the store over in 1904, the next year after the rush?

A. It was in 1903 when the rush was, was it not? I took it in March, 1904. I thought first it was in 1903.

Q. Now, this inventory that you took—all these goods that were inventoried had been in there since 1903, had they not? A. Yes.

Q. It is true, is it not, that some of them were so severely damaged as to be almost worthless?

A. No. I have a list of all that were damaged when I turned the store over to Mr. Fagerberg.

Q. How did you arrive at the prices in that inventory?

A. Just Herman Meyer's prices, the cost price, and 33%, on what it cost to take the goods in—the original price, and 25% to bring them in, and 33% as profit in running a general store, that was the basis we figured on.

Q. You put the original price on the goods, plus the freight to Valdez, plus 25% transportation in to Chititu, plus 33% profits, was that it?

A. Yes, about that.

Q. Now, all of these goods at that time were four or five years old, were they not?

A. Some of them, not all. We took in quite a lot of goods the year I went in, and the next year Mr. Meyer brought in about \$3,000 worth. [280—262]

Q. Were any of these goods in the list you turned over to Fagerberg—had you not disposed of these

(Deposition of Alex Wilson.)

goods in the meantime? A. No.

Q. How much was left?

A. I could not tell you that.

Q. \$500.00 worth? A. Yes.

Q. Those furs you speak of, they belonged to the Nizina Trading Company, did they not? A. Yes.

Q. You say your salary was \$1,500.00 a year?

A. Yes.

Q. And what kind of a business did you do while there—a very profitable business?

A. That last year, of course, was a bad year, the creek was a little bit on the bum on account of water and nothing to do that season, and of course the store was not very profitable that season.

Q. Did you make any profit?

A. Not that year; the season before we made a fine profit.

Q. But that year you did not make any profit?

A. No, none whatever.

Q. That year there were not many operators—Kernan and Esterly were the only developing operators that year, were they not? A. Yes.

Q. Do you know, as a matter of fact, that there was no demand for goods after Fagerberg took the store over?

Objected to by defendants as irrelevant, incompetent and immaterial, and not cross-examination.

Objection overruled. Defendants allowed an exception.

A. Well, after I left Esterly ran short of goods, just during [281—263] that time—a few days be-

(Deposition of Alex Wilson.)

fore I left—after I had delivered the store over to Fagerberg, Esterly got short of goods, and he had to have milk and other things amounting to \$250.00, that he sold at once.

Q. Do you think he kept up that lick during the remainder of the season? A. I do not know.

Q. Now, Esterly and Kernan had been in the habit of taking up whatever outfit and provisions they thought would last them the season, had they not?

A. Yes.

Q. You brought out some of the furs you speak of and sold them to make up the balance of your salary for that year?

A. Yes, to the Nizina Trading Company.

Q. You did not do business enough that year to make up your salary? A. No.

Q. And these furs belonged to the Nizina Trading Company that you delivered to J. A. Fagerberg?

A. Yes.

Witness excused.

Mr. LYONS.—I will now read the deposition of Thomas Carstens.

[Deposition of Thomas Carstens, for Defendant.]

Direct Examination of THOMAS CARSTENS,
Conducted by THOMAS R. LYONS, Attorney
for the Defendants.

Q. State your name and place of residence?

A. Thomas Carstens, Tacoma, Washington.

Q. What relation do you bear to the Carstens Packing Company? A. I am its president.

Q. How long have you served in that capacity—

(Deposition of Thomas Carstens.)

as president of that company? A. For ten years.

[282—264]

Q. Now, are you acquainted with the company known as the Nizina Trading Company? A. Yes.

Q. You were one of the stockholders in the Nizina Trading Company? (Plaintiff at this time objects to all the testimony of this witness regarding the Nizina Trading Company or the store at Chititu owned by the Nizina Trading Company, for the reason that the Nizina Trading Company is not in any way a party to this litigation, as the testimony of Mr. Prater, one of the witnesses herein, shows that the property of the Nizina Trading Company at Chititu was never owned by the Carstens Packing Company.)

Objection overruled. Plaintiff allowed an exception.

A. Yes, myself and Herman Meyer.

Q. Were you and Mr. Meyer all of the stockholders of that company during all of the time of its existence?

A. Yes. I say yes, yet there might have been other stockholders holding one share, to make the company, I could not say just now, but Mr. Meyer and myself owned substantially all of the stock.

Q. That company owned the store at Chititu, Alaska, did it not? A. Yes.

Q. What disposition did you make of that store and the merchandise contained therein?

A. I gave a bill of sale to Al Fagerberg.

Q. That is J. A. Fagerberg?

(Deposition of Thomas Carstens.)

A. Yes, J. A. Fagerberg, about eight years ago.

Q. What arrangements did you make with J. A. Fagerberg at that time?

A. We did not get along well up there, so I executed to him a bill of sale without a consideration. He was to continue to run [283—265] the store and pay us for the inventory as soon as he was able.

Q. What arrangements were made with respect to any salary he was to receive, or was he to receive any?

A. There was nothing said at that time about it. He and his brother had been running the store for several years.

Plaintiffs object to this answer as not responsive to the question, and not binding on H. M. Fagerberg, as it is not shown that he was present.

By the COURT.—The last part of the answer may be stricken out as not responsive to the question.

Defendants allowed an exception to the ruling.

Q. You say he and his brother had been running the store—you mean H. M. Fagerberg?

A. Yes, A. J. Fagerberg and Harry Fagerberg.

Q. Harry is H. M. Fagerberg, is he not?

A. Yes I kept after Fagerberg for several years to render a settlement which he promised to make, but he never did, so finally, I believe it was in 1911, or about that time, I made a settlement in which Fagerberg and myself agreed on \$10,000.00.

Q. That is, he was to pay the Nizina Trading Company \$10,000.00 for that store and the stock of goods therein contained at Chititu?

(Deposition of Thomas Carstens.)

A. He was to pay \$10,000.00 for the stock of goods in the store at Chititu, yes.

Q. Did he ever pay you that \$10,000.00 or any part of it? A. Nothing.

Q. Did he pay the Nizina Trading Company or any of its officers any money for the store?

A. He never did.

Q. You were also, you stated, president of the Carstens Packing Company? A. Yes. [284—266]

Q. You had some dealings with J. A. Fagerberg or Fagerberg Brothers as president of that company, did you not?

A. Yes—for about ten years I have been dealing with them.

Q. Now, in July of 1913, did you have any conversation with J. A. Fagerberg with reference to a certain bill of sale that he had made to his brother, H. M. Fagerberg, giving to the latter all his property in Alaska? A. Yes.

Q. When and where was such conversation had?

A. At Seattle and Tacoma.

Q. With reference to the conversation held at Tacoma, who was present when you had that conversation with him?

A. Mr. Wilt and I believe Mr. Meyer, and Mr. Fagerberg—J. A. Fagerberg.

Q. Was Mr. Prater there?

A. Not in Tacoma—he was present at several conversations in Seattle, if I remember right.

Q. To refresh your memory. I would ask you to recall that Mr. Prater brought or went with Mr.

(|Deposition of Thomas Carstens.)

Fagerberg and his brother-in-law, M. Custer, over to your place of business in Tacoma?

A. Yes, I remember now, he was there.

Q. You remember now that Mr. Prater was also present at that conversation you had with Mr. Fagerberg at Tacoma? A. Yes, I remember now.

Q. State the substance of the conversation that took place between you and Mr. Fagerberg at that time?

Plaintiff objects to this question at this time for the reason that it is shown that H. M. Fagerberg was not present; it is also shown that J. A. Fagerberg had parted with his title to the property at the date this conversation is alleged to have taken [285—267] place, and he was therefore unable to bind his vendee by any statements of his own.

Objection overruled. Plaintiff allowed an exception.

A. J. A. Fagerberg was in trouble—getting a divorce from his wife—and fearing he would lose out he wanted to turn all the property belonging to him and his brother over to me for what he owed me. At the time he first offered it to Mr. Prater Mr. Fagerberg told me Mr. Prater refused to take the bill of sale, and then he turned the property over to his brother, H. M. Fagerberg, and he thought his brother would no doubt be willing to turn the property back to me if he asked him to. We thought of sending him to Alaska, and Mr. Wilt would go with him, for the purpose of having this property turned back to me. This, however, failed.

(Deposition of Thomas Carstens.)

Q. Did Mr. J. A. Fagerberg state at that time why he had made that conveyance to his brother?

Objected to by plaintiff on the ground that the question is leading.

(No answer to the question.)

Q. State the reason he assigned for so conveying?

A. The reason he gave for assigning the property to his brother was on account of trouble he was having with his wife; at that time he had a divorce suit pending, and he feared his wife would attach his property and he wanted to turn it over to us, and as Mr. Prater refused to take it, he turned it over to his brother.

Q. You say you had another conversation with him in Seattle? A. Several of them.

Q. Who was present at the first conversation you had with him in Seattle?

A. I think Mr. Prater was there, and I think Mr. Wilt was, as [286—268] Mr. Wilt is usually with me when we make these settlements.

Q. What conversation did you have with Mr. Fagerberg at that time?

Plaintiff objects on the ground that plaintiff in this case is in no way bound by statements made by J. A. Fagerberg in this conversation because it is shown that H. M. Fagerberg was not present, and J. A. Fagerberg had previously transferred this property to H. M. Fagerberg, and therefore cannot bind his vendee by his statement.

Objection overruled. Plaintiff allowed an exception.

(|Deposition of Thomas Carstens.)

A. Along the same lines—that he wanted to turn the property over to me instead of his brother, for the reason that he owed me.

Q. Do you mean the Carstens Packing Company or yourself?

A. I mean the Carstens Packing Company.

Q. At this time J. A. Fagerberg or Fagerberg Brothers were indebted to you personally, as well as the Carstens Packing Company, were they not?

A. Yes.

Q. Now, that last conversation that *he* have detailed, in Seattle, about what time was that?

A. In August of 1914 (should be 1913—B. A. N.).

Q. Did you have any other conversation with him subsequent to that time about this matter?

A. In Tacoma, in the spring of 1914.

Q. What was the substance of that conversation you had with him in the spring of 1914?

Same objection as last previously offered, is made by plaintiff.

Objection overruled. Plaintiff allowed an exception.

A. He wanted to go back to Alaska after he got his divorce, wanted further credit, which I could not give him. Later on he again asked me for credit, which I said I could not give him, [287—269] but I then promised to let him have a couple of hundred dollars worth of meat. He and his brother wanted to run a sawmill and I allowed him this shipment of meat, and that is as far as I would go. Later on, without any further asking or writing, he drew on

(Deposition of Thomas Carstens.)

us for about \$1,500.00, freight on some hay and grain that was shipped. Thinking it would put the fellow out pretty bad if I did not pay it, I paid it, although I had not promised to help him out any further. Then he followed this up by sending several orders down for groceries and meat, which I also bought for him and paid for and sent to him. In a letter about that time he agreed to come down by May 1st, and again July 1st, to make some sort of a settlement. Among other things he agreed to, or offered to start a company made up of myself, himself and his brother, but my answer was that I would not do anything, but if he came down I might do something along those lines; I might do something if he came down, if we could make satisfactory arrangements, but he never came. When further orders came from him for groceries and meat, I sent them on to a man by the name of Brown, whom I had sent up there in the meantime to look after our interests. Some of these orders Brown turned over to Fagerberg; some of them he sold himself. And that is about the whole of our transaction.

Q. Well, when you paid the draft in March of 1914, and shipped good wares and merchandise from March, 1910 (1914—B. A. N.) to May, 1910 (1914—B. A. N.), did you intend to send them to J. A. Fagerberg or to Fagerberg Brothers?

Plaintiff objects to this question as very, very leading, and not the best evidence, as the consignment itself is the best evidence, as the shipping bill would show to whom they were sent. Objection overruled.

(|Deposition of Thomas Carstens.)

Plaintiff allowed an exception. [288—270]

A. All the business was done from the conversations I had with J. A. Fagerberg, but it was conducted in the name of Fagerberg Brothers, although I had never seen Harry Fagerberg.

Plaintiff moves to strike this answer as not responsive to the question.

Motion denied. Plaintiff allowed an exception.

A. My business had been transacted with J. A. Fagerberg.

Q. State why you billed the goods to J. A. Fagerberg, if you understood Fagerberg Brothers were doing business as partners?

A. I done all my business with J. A. Fagerberg for the last ten years, not being acquainted with his brother, so I sold and billed everything to him.

Q. The Carstens Packing Company has not been paid for any of the goods, wares and merchandise that you forwarded to Fagerberg Brothers in 1914?

A. Nothing has been paid that I know of—there may be a small credit, I cannot state exactly—there may be a couple of hundred dollars.

Q. All the remainder of the bill is unpaid?

A. Yes

Q. And the draft that you paid in March, 1910 (1914—B. A. N.), has that been paid?

A. No part of it.

Q. Did Mr. Fagerberg have any conversation with you over the telephone, while he was in Seattle and you were in Tacoma, with reference to request he made on you to guarantee to pay any alimony his

(Deposition of Thomas Carstens.)

wife might collect from him when he got back to Alaska?

Plaintiff objects to this question as not belonging to any of the issues joined in this action, and as incompetent, irrelevant and immaterial. [289—271]

Objection overruled. Plaintiff allowed an exception.

A. I remember some talk, but I don't remember now just what the exact talk was.

Q. To refresh your memory; do you recall that Mr. Fagerberg was to go to Alaska to procure a reconveyance from his brother of all the property he had conveyed to his brother, to you, and that when he came to Seattle, just before leaving for Alaska, he called up over long distance telephone, and requested that you guarantee to pay any alimony his wife might collect from him in Alaska?

Plaintiff objects to this question as not within the issues of this case, and cannot in any way bind the plaintiff in this action.

Objection overruled. Plaintiff allowed an exception.

A. I remember such a telephone conversation, but I cannot give the details.

The reading the direct examination being finished, court took a recess to 2 P. M.

AFTERNOON SESSION.

Mr. RITCHIE.—Before proceeding further with the testimony in this case, I desire to ask leave to amend the amended answer filed by the defendants,

(Deposition of Thomas Carstens.)

as per printed motion which I have filed with the clerk.

Mr. DIMOND.—I object to the proposed amendment on the ground that it is improper and has no proper place in the pleadings and on the second ground that the last clause in it contains a conclusion. It is all in the record, as Mr. Ritchie has testified.

Mr. RITCHIE.—This is only done to make the pleadings conform to the proof.

By the COURT.—I prefer not to pass on this matter just at present, but I will do so before the matter is submitted to the jury. [290—272]

Mr. Dimond reads the cross-examination of Thomas Carstens.

Cross-examination.

(Conducted by T. J. DONOHOE, Attorney for Plaintiff.)

Q. Mr. Carstens, that store at Chititu was the property of the Nizina Trading Company, was it not? A. Yes.

Q. And the Nizina Trading Company executed the bill of sale of that store that was made to J. A. Fagerberg? A. Yes.

Q. And J. A. Fagerberg went into possession of that store under arrangements with the Nizina Trading Company? A. Yes.

Q. And he was accountable to the Nizina Trading Company, was he not? A. Or rather to me.

Q. To you personally?

(Deposition of Thomas Carstens.)

A. Yes. The Nizina Trading Company owned the store, but owed me more than the assets of the company.

Q. Getting back to the Nizina Trading Company, was it not true that J. D. ——— and Robert Blie were at one time connected with that company? Were they not in the original organization of the company in 1901-2-3, when the company was formed?

A. I don't remember whether they were or not. I believe we sold them goods from the store, for which we never were paid.

Q. Now, you spoke of Fagerberg going to Alaska, J. A. Fagerberg, in 1914. What was the arrangement between you and him when he went there in 1914?

A. There was no arrangement at all other than I agreed to let him have as high as \$200.00 worth of meat, which he was to use there.

Q. Now, previous to going to Alaska, he had asked you for credit? A. Yes. [291—273]

Q. How much?

A. He wanted me to help him, for several thousand dollars.

Q. And you refused twice to let him have credit?

A. Yes, several times.

Q. You did agree, however, to let him have about \$200.00 worth of meat? A. Yes.

Q. Now, then, as I understand it, Fagerberg made two requests to you for credit, and you turned them both down but \$200.00 worth of meat, and that was

(Deposition of Thomas Carstens.)

the condition of the transaction when Fagerberg went to Alaska in 1914? A. Yes.

Q. And then, without any further transaction between you, he drew on you for about \$1,500.00, and you paid it? A. Yes.

Q. And he sent you orders for about \$2,800.00 worth of goods, and you furnished them to him, did you? A. Yes.

Q. And you furnished them when that was the condition of the transaction between you?

A. I received a letter from him saying he would come down about the first of May and arrange a settlement.

Q. And that was the condition of the transaction when you advanced him \$1,500 in cash, and sold him between \$2,500 and \$3,000 worth of goods?

A. Yes.

Q. And he made no arrangements with you for forming a corporation?

A. There may have been some talk, but I turned them all down.

Q. Is it not a fact that when Fagerberg went to Alaska you had an arrangement that he was to purchase back or get back a transfer [292—274] of the business that stands in his brother's name, that Al. Fagerberg was to get \$10,000 worth of the capital stock in the corporation that was to be formed, for his time, and Harry Fagerberg was to get \$7,000 worth of the capital stock for this business which he was to turn back, and you were to get the balance of the stock?

(Deposition of Thomas Carstens.)

A. I believe that is the proposition he made to me after he got up there.

Q. But you had no such arrangement when he went? A. No.

Q. You had no arrangement that he was to make arrangements with H. M. Fagerberg—that he was to get back the property?

A. He made several propositions to me.

Q. And you turned all of them down?

A. Yes, until he would come back from Alaska with a proposition that would suit me.

Q. Now, notwithstanding that, you advanced him, in money and goods, about \$4,000 after he left here?

A. Yes, that is where I made my mistake. But I decided to help him out, thinking he would appreciate it and pay me, but he failed to even come down as he wrote he would.

Q. On the books of the Carstens Packing Company this account was always carried in the name of J. A. Fagerberg, was it not? A. Yes.

Q. You had no correspondence with H. M. Fagerberg at all?

A. No; he was the working end of the business there in Alaska, and J. A. Fagerberg came down each year and bought cattle.

Q. How do you know that H. M. Fagerberg was the working end of the business?

A. He told me so many times.

Q. Who told you? [293—275]

A. J. A. Fagerberg.

Q. A good portion of this time he was not work-

(Deposition of Thomas Carstens.)

ing for the Carstens Packing Company—he was running the store for the Nizina Trading Company, most of the time, was he not?

A. Harry Fagerberg was running the Chititu store with Al, but nearly all of my dealings were with J. A.

Q. When did you first know of the Fagerberg Brothers as a partnership?

A. About ten years ago; all I know is what Al told me, that his brother was up there and they were working together.

Q. Did he say his brother was a partner?

A. Yes.

Q. And you knew of this ten years ago?

A. Yes.

Q. During all of these years you knew that J. A. Fagerberg and H. M. Fagerberg were partners in Alaska? A. From what J. A. told me.

Q. Now, notwithstanding that, you carried the account in the name of J. A. Fagerberg?

A. Yes, sir.

Q. Notwithstanding that you sued J. A. Fagerberg for an indebtedness that he owed, and secured a judgment? A. Yes.

Q. And he did not include H. M. Fagerberg?

A. No.

Q. And you looked personally to J. A. for payment? A. Yes.

Q. And did not look to Fagerberg Brothers, in advancing this credit, but, knowing that Harry Fagerberg was connected with J. A. Fagerberg, the

(Deposition of Thomas Carstens.)

bills were made out in the name of J. A. Fagerberg, and you did not look to H. M. Fagerberg or the alleged [294—276] partnership for payment, but to J. A. Fagerberg? A. To J. A. Fagerberg.

Q. And you never advanced any credit to the alleged partnership of Fagerberg Brothers?

A. Yes, J. A. Fagerberg told me his brother was working with him, keeping store with him, what was his was his brother's, and what was his brother's was his, they were working together?

Q. Notwithstanding that, in July of 1914 you started a suit in Alaska entitled Carstens Packing Company vs. J. A. Fagerberg, not including H. M. Fagerberg or Fagerberg Brothers?

A. My understanding was that we were to sue Fagerberg Brothers. Mr. Wilt handled this matter.

Q. Did you so instruct Mr. Wilt? A. Yes.

Q. Was Mr. Wilt in Alaska last year? A. Yes.

Q. Was he there when this suit was commenced?

A. I believe so.

Q. Did he make the arrangements for the commencement of the suit? A. Yes.

Q. And he has been attorney for Carstens Packing Company for some years? A. For two years.

Q. That is the only business he attends to?

A. Yes.

Q. And you instructed him to bring suit in the name of Fagerberg Brothers? A. Yes.

Q. Do you know whether he did or not?

A. I understand since that he did not. I have learned of that [295—277] lately. I did not

(Deposition of Thomas Carstens.)

know—I left it all with him.

Q. I see the Carstens Packing Company has filed an amendment to its answer in case of H. M. Fagerberg vs. the United States Marshal of the Third Division, in substance as follows: That at the time of the commencement of said action of Carstens Packing Company vs. J. A. Fagerberg, the plaintiff in said action was not aware that the plaintiff herein, H. M. Fagerberg, and the said J. A. Fagerberg, were partners. How do you explain that in your Answer, that you did not know they were partners up to July 31, 1914?

A. I know I told Mr. Wilt to bring suit against the brothers, as I stated before. I don't know why he sued J. A. alone. Mr. Wilt is not in town, he is in the East, and I did not know until to-day that the suit was brought in the name of J. A. Fagerberg alone.

Q. And when you paid the \$1,500 draft and sent him these goods in 1914, which amounted to something over \$4,000, you at that time had personal knowledge that all the business stood in the name of H. M. Fagerberg, did you not?

A. No, I heard they were partners, working together.

Q. Did you not know that J. A. Fagerberg had executed a bill of sale to H. M. Fagerberg the year previous?

A. I am not sure that J. A. made a bill of sale to his brother of the Chititu store or his business.

Q. Do you not remember that in the spring of 1913

(Deposition of Thomas Carstens.)

J. A. Fagerberg wanted to make a bill of sale, of what he terms the whole works, to Carstens Packing Company, or to you? A. Yes.

Q. Was not the condition of making such a bill of sale that the Carstens Packing Company was to pay the back salary of \$4,500 to H. M. Fagerberg?

[296—278]

A. Not that I know of.

Q. What were the conditions that J. A. Fagerberg offered to make that bill of sale for?

A. I do not recollect. I do remember that there was some consideration he wanted to make his brother, in order to get him to turn it all back.

Q. But when he offered to deed it to you or the Carstens Packing Company, what were the conditions?

A. I don't remember just now, but I remember there was an amount he wanted to pay his brother, in order to leave his brother out of the transaction and turn the property over to me.

Q. Now, he was ready to turn the property over to you if you would pay his brother a certain amount of money, is that right? A. I believe that is it.

Q. And you refused? A. I believe I did.

Q. And that is the reason he did not make the bill of sale at that time?

A. It was something that came up—I don't remember.

Q. But you remember his making such a demand?

A. I believe there was something like that.

Q. Did that take place in the conversation in Se-

(Deposition of Thomas Carstens.)

attle or Tacoma, that you have testified regarding?

A. I don't quite remember—one of these places.

Q. Now, in regard to this partnership, Mr. Carstens, have you at any time, or has your company at any time, either in conversations or by letter, had any acknowledgment from H. M. Fagerberg that he was a copartner with J. A. Fagerberg during the time of these transactions?

A. All of our dealings were with J. A. Fagerberg, and all I know is what he told me from time to time during the past six or [297—279] eight years.

Q. You have never met H. M. Fagerberg?

A. I do not know him at all, all our dealings were with J. A.

Q. Now, is it not a fact that the reason you and J. A. Fagerberg did not form a corporation in the year 1914, for trading purposes was because you wanted to put in the Nizina store—the remainder of the Nizina Trading Company's stock—at \$10,000 and J. A. Fagerberg would not accept it at that price?

A. No, I don't think that was it.

Q. You remember such a question coming up?

A. A proposition was made to me by letter which was not acceptable to me.

Q. Have you that letter?

A. I can get it, or I am pretty sure I can. Anyway, he promised to come down here, which he never did, and so no transaction was ever made.

Q. Did you have some such conversation before he went north?

A. Perhaps we had some such conversation. I

(Deposition of Thomas Carstens.)

don't remember the details of it. Now, my talk with him was that I wanted the security for what he owed us, and getting that I might go in with him on some deal to help him out and put him on his feet, that is the long and short of it. I remember getting a letter from him saying what he will do, and if I remember right, I answered him. I believe I can produce this letter and the answer if you want them, showing exactly what was done. I told him nothing could be done until he came down, and he never came.

Q. Mr. Carstens, your last conversation with J. A. Fagerberg before he went north in the spring of 1914 was that he was to go up there and get security for what he owed the Carstens Packing Company—security for something like \$2,600—a judgment which [298—280] you had against him at that time, was it not? A. He owed me \$10,000.

Q. Did not owe the Carstens Packing Company?

A. No, but he owed me.

Q. Now, notwithstanding the fact that you wanted security for that amount, you advanced him another line of credit of about \$4,000 after he went to Alaska?

A. We did not advance it to him, but he took the liberty of drawing on me and sent down orders and not wishing to discommode him I paid the draft and sent the goods to him, thinking he would reimburse me, and he promised to do so, but he never has.

Q. Although you wanted security before you dealt further with him, still after he got up there you advanced him goods and merchandise, and paid his draft?

(Deposition of Thomas Carstens.)

A. By paying his draft and sending his grocery orders, I thought I could make him ashamed, and that he would deal honest with me and remember his friend.

Q. Well, when was this letter written that you speak of?

A. That was after he went up there in the spring.

Q. About what month?

A. I think March or April, along there.

Q. When did you send Mr. Wilt up there to check him up?

A. That must have been in July, I think. That was after I heard he said he had no intention of coming down.

Q. Did he state when he could come down, or did you state when you wanted him?

A. Well, he made talk up there that he did not intend to come down.

Q. And that talk was carried to you? A. Yes.

Q. The Carstens Packing Company have never at any time had any [299—281] direct business transactions with H. M. Fagerberg, have they?

A. Not direct, only through J. A.

Redirect Examination Conducted by Mr. THOMAS
R. LYONS, Attorney for the Defendants.

(Read by Mr. LYONS.)

Q. In response to one of counsel's questions, you stated that in the conversation which took place between yourself and J. A. Fagerberg, that he spoke something about Harry being paid something, in case he procured a conveyance from Harry of all of

(Deposition of Thomas Carstens.)

his property or all of the property of the partnership back to you or to the Carstens Packing Company. Now, was it stated at that time that Harry was to receive this money merely to get him out of the partnership, or that he was to have this money in consideration of anything else?

Plaintiff objects to this question as leading—witness should be asked to state the conversation.

Mr. LYONS.—We only want him to explain his statement to you.

Objection overruled. Plaintiff allowed an exception.

A. He was to have whatever amount was mentioned in order to have the property turned back to me and to keep him out of the partnership with his brother.

Q. Now, you stated in response to a question on cross-examination that you instructed your attorney, Mr. Wilt, to bring suit last summer on behalf of the Carstens Packing Company against Fagerberg Brothers. Do you happen to know as a matter of fact that Mr. Wilt went to Alaska and prepared a complaint, to be filed at Valdez, Alaska, wherein Carstens Packing Company was to be plaintiff, and Fagerberg Brothers, defendants, pursuant to your instructions?

Plaintiff objects to any testimony he does not know of his own knowledge. [300—282]

Objection overruled. Plaintiff allowed an exception.

A. Yes, that was my instructions; I am certain I

(Deposition of Thomas Carstens.)

told him to bring suit in the name of Carstens Packing Company against Fagerberg Brothers, and I believe I gave him a power of attorney to act for us, if I am not mistaken.

Q. In this case that counsel has called your attention to, you did not verify the Answer that was filed, did you? A. No, sir.

Q. The Answer in this case which states substantially that the Carstens Packing Company was not aware at the time said Answer was filed that a partnership existed between the two Fagerbergs, you yourself never saw that Answer until after it was signed by counsel in Alaska, did you? A. No.

Recross-examination Conducted by Mr. T. J. DONOHUE.

(Read by Mr. LYONS.)

Q. Mr. Carstens, in 1913, when J. A. Fagerberg was here and offered that bill of sale to you, for that property in Alaska, you knew then that S. Blum had a mortgage on that property for about \$6,000, did you not?

Defendants object to this line of testimony, for the reason that it is irrelevant, incompetent and immaterial, and not cross-examination.

Objection overruled. Defendants allowed an exception.

A. He told me he owed Blum, but he told me he was paying him off, or that his brother was paying him off, with rent from the property he had at McCarthy, and that he and his brother practically owed no bills when he left here a year ago.

(Deposition of Thomas Carstens.)

Q. Did not your agent, Mr. Wilt, notify you when he arrived in Alaska that H. M. Fagerberg had paid off the Blum indebtedness [301—283] during the year he owned the property under this transfer from Al?

Same objections made by defendants.

Objection overruled. Defendants allowed an exception.

A. I do not recollect.

Q. Did you know before you brought that suit in July, 1914, that the indebtedness owing to Blum had been cleaned up, that the property was clear?

A. Yes, I think so.

Q. Before you brought the last suit?

A. I am not sure about it, but I believe I heard something like that. Al Fagerberg told me a good many things that did not prove to be true; I don't know who told me, but I heard it.

Q. Al Fagerberg had been in Seattle and around Seattle the greater part of the year 1913 and up to the spring of 1914, had he not?

A. Around this part of the country.

Q. Not in Alaska? A. I don't think so.

Q. Then H. M. Fagerberg was managing the business from the time of the transfer to the time Al went back, was he not? A. I believe so, I don't know.

Redirect Examination Conducted by Mr. THOMAS

R. LYONS, Attorney for Defendants.

(Read by Mr. LYONS.)

Q. Did you have any conversation with Al Fagerberg with reference to his having leased certain

(Deposition of Thomas Carstens.)

property before he left there, and that the rent from the leased property was to go to pay up Blum's claim? A. Yes.

Q. Where did you have that conversation?

A. Why, both in Seattle and Tacoma.

Q. State the substance of these conversations?

[302—284]

A. I believe he told me the renter had instructions to pay the rent to Blum.

Q. The renter had orders?

A. The renter who rented the roadhouse was paying the rent to Blum instead of Fagerberg.

Q. Did he tell you who gave the renter authority to so pay the rent? A. I believe he did.

Re-recross-examination Conducted by T. J. DONOHOE, Attorney for the Plaintiff.

(Read by Mr. LYONS.)

Q. You knew in 1913 that Blum had a mortgage on the Blackburn property, did you not?

A. I knew they owed Blum, but I do not recollect about the mortgage.

Witness excused.

(Signed) THOS. CARSTENS.

[Deposition of Alex Wilson—Redirect Examination, etc.]

Redirect Examination of Mr. ALEX WILSON Conducted by Mr. THOMAS R LYONS, Attorney for Defendants.

(Read by Mr. LYONS.)

Q. Since you testified before in this case, have you had occasion to reflect on your testimony which

(Deposition of Alex Wilson.)

might enable you to explain any part of your testimony that you gave before? A. Yes, sir.

Q. Will you state what correction you desire to make?

Plaintiff objects to any testimony of this witness in any manner connected with the store at Chititu, Alaska, for the reason that it is irrelevant, incompetent and immaterial in this that the testimony offered shows that the store at Chititu was at all times the property of the Nizina Trading Company, and that the Carstens Packing Company had no interest whatever in that store or property.

Objection overruled. Plaintiff allowed an exception. [303—285]

A. After I left here I went up to the store and spoke to my wife about 1907, your saying that the business did not pay; she said (my wife was the book-keeper of the store): "We invested most of the cash in furs, the proceeds of 1906 and the spring of 1907," and of course we did not take in enough during the summer to pay my salary, that is, up to \$90.00; took it all in except \$90.00.

Q. What was the bill of furs that you purchased during the winter and spring of 1906-7?

Plaintiff objects to this question on the ground that it is not the best evidence. The witness has stated there are books, the books themselves will show.

Objection overruled. Plaintiff allowed an exception.

A. Not less than \$500, and maybe up to \$800.00,

(Deposition of Alex Wilson.)

between \$500.00 and \$800.00 worth of furs.

Q. Did you pay cash for these furs?

A. Cash—that always had to be paid in cash.

Recross-examination Conducted by Mr. T. J. DON-

OHOE, Attorney for the Plaintiff.

(Read by Mr. DIMOND.)

Q. You paid between \$500 and \$800 during the winter of 1906, for furs? A. Yes.

Q. Where did you get that cash?

A. We took it in during the summer and part of the fall, after I remitted to Mr. Meyers.

Q. You remitted to him when he was in Alaska—that was the fall?

A. That was the latter part of September; he left the 6th day of October.

Q. You took in between \$500 and \$800 in that store between October, 1906, and the early spring of 1907?
[304—286]

A. No, that is from the time I left there to come out.

Q. When did you leave?

A. Between the 26th of August and the 1st of September, to come out. My wife was running the store, and took the money in while I was gone.

Q. How much money did your wife have when you left? A. I don't remember.

Q. Of these furs, what part of them did you take out with you?

A. I took out just what I thought would be a plenty to pay the \$90, just a few of them, because I was afraid to take the furs down the river. Because

(Deposition of Alex Wilson.)

I was in the first boat that ever went down Copper River and landed at Valdez, I was afraid to risk them. I came down Copper River to the mouth.

Q. You don't claim that was the first boat that ever went down the Copper River, do you?

A. Yes, the first boat that ever went down to the mouth and landed at Valdez.

Q. These furs that you claim you bought for from \$500 to \$800 were the furs that you turned over to Fagerberg, that you claimed were worth \$4,000, were they not?

A. No; we have a list of all the furs we bought that year, and they are shown on the books. The furs had been accumulating for a long time, you understand, as we had no way to take them out.

Witness excused.

(Signed) ALEX G. WILSON.

[305—287]

[Deposition of Henry Wolf, for Defendants.]

Direct Examination of HENRY WOLF Conducted
by Mr. THOMAS R. LYONS, Attorney for the
Defendants.

(Read by Mr. LYONS.)

Q. State your name and place of residence?

A. Henry Wolf, 3822 North 18th, Tacoma, Washington.

Q. Did you ever take any cattle from Seattle to Alaska?

A. Yes, I took a car load of cattle from Seattle to McCarthy, from Carstens Packing Company, and delivered them to the Fagerbergs.

(Deposition of Henry Wolf.)

Q. When was this?

A. During the summer of 1912.

Q. Did you have any conversation with H. M. Fagerberg at the time the cattle were delivered?

A. After they were unloaded I walked with him to the roadhouse, in a general conversation he said, "That is a nice bunch of cattle, and we ought to make some money out of them."

Q. Was any one else present?

A. No, we were walking back alone, along the railroad track.

Q. Did you ever have control of the Chititu store for the Carstens Packing Company?

A. Yes, I was sent up there to take stock.

Q. When was that?

A. During the summer of 1912, after I got through delivering cattle.

Q. Did you take the stock of the store at that time?

A. I did.

Q. What did the inventory amount to at that time?

A. About \$500 if my memory is right.

Objected to by plaintiff as not the best evidence, as the inventory itself will show the amount.

Objection overruled. Plaintiff allowed an exception.

Q. Have you a copy of that inventory?

A. I have not.

Q. Do you know whether or not there is a copy of it in Valdez at this time? [306—288]

A. I do not.

Q. But you remember taking the inventory and signing for it?

(Deposition of Henry Wolf.)

A. I did so. My best recollection is that it inventoried about \$500, principally in hardware.

Plaintiff moves to strike as not the best evidence.

Motion denied. Plaintiff allowed an exception.

Cross-examination of Mr. WOLF Conducted by Mr.

T. J. DONOHOE, Attorney for the Plaintiff.

(Read by Mr. DIMOND.)

Q. You went to Alaska in 1912 with cattle?

A. Yes.

Q. Your first trip? A. Yes.

Q. Have you been there since?

A. No, I have been down here since. (Yes, I made one more trip about two months later—B. A. N.)

Q. How were these cattle billed?

A. To Carstens Packing Company.

Q. And you were there as their agent?

A. Yes.

Q. Who did you actually deliver them to?

A. The two brothers, A. J. and H. M. Fagerberg.

Q. Did H. M. sign any receipt for them?

A. Neither of them did.

Q. How do you know you delivered them to Harry Fagerberg? A. He went there with me.

Q. To help unload? A. Yes.

Q. And he helped you unload? A. Yes.

Q. That is all you know about it, actually?

[307—289]

A. Why, that and what he said about its being a nice bunch of cattle and they ought to make some money out of them.

Q. He said we ought to make some money out of

(Deposition of Henry Wolf.)

them? A. Yes, he did.

Q. That is impressed on your mind so that you remembered it over two years?

A. That impressed me that they were partners.

Q. Well why did the word "we" impress you that they were partners?

A. Anyone would think so.

Q. Was anyone questioning the partnership at that time? A. Not that I know of.

Q. Who told you that the Fagerberg Brothers were in partnership?

A. One party was the butcher.

Q. Glassbrenner & Smith? A. Yes.

Q. Which one? A. Both.

Q. Who were present at such conversation?

A. Smith and his partner and myself were present.

Q. How did the conversation come up?

A. In a general conversation.

Q. In what month of 1912 was that?

A. In the summer of 1912.

Q. In the summer of 1912 Smith and Glassbrenner stated to you in the town of Cordova that A. J. Fagerberg and H. M. Fagerberg were in partnership? A. Yes, sir.

Q. Was any one else present at that conversation? A. Not that I remember.

Q. And from that conversation with Smith and Glassbrenner you remembered Harry Fagerberg as saying, "That some money ought to be [308—290] made by them"—or "We ought to make some

(Deposition of Henry Wolf.)

money"—out of them?

A. Yes. That day Al took the horse back from the place where we were unloading cattle, and Harry and I walked back by the railroad track, and in a general conversation this matter came up, and he said, "That is a fine bunch of cattle and we ought to make some money out of them."

Q. He did not say "some money ought to be made out of them"?

A. No, he said we ought to make some money.

Q. How long did you stay in McCarthy?

A. About two weeks.

Q. Did you stay at the roadhouse? A. Partly.

Q. Then you went to Chititu? A. Yes.

Q. Was Harry running the roadhouse?

A. No, the roadhouse was in charge of a lady, I think, a Mrs. Cole.

Q. Who helped you take the inventory?

A. I took it myself.

Q. What authority had you to take this inventory? A. They wrote me to go up.

Q. Gave you a note to Fagerberg Brothers?

A. I don't remember.

Q. You have stated all you heard that impressed you that they were partners?

A. I heard several parties inquiring if there was any fresh meat in town, and they said in a few days at Fagerberg Brothers' store.

Q. Did they have a sign out? A. No.

Q. You are working for Carstens Packing Company now, are you not?

(Deposition of Henry Wolf.)

A. No, I have not been since. (The last trip in—

B. A. N.)

Q. What is your business? [309—291]

A. Meat cutter.

Q. When you returned from Alaska in 1912 you severed connection with the Carstens Packing Company? A. Yes.

Q. And have not worked for them since?

A. No.

Witness excused.

(Signed) HENRY WOLF.

Defendants offer in evidence a letter, dated Seattle, Washington, June 5, 1907, from Herman Meyer to Mr. Alex G. Wilson, and plaintiff admits that the letter is a letter from Herman Meyer to Alex G. Wilson, and that the signature attached thereto is the signature of Herman Meyer, but plaintiff objects to the letter being offered in evidence for the reason that the same is irrelevant incompetent and immaterial, and for the further reason that it is shown by the testimony that the Carstens Packing Company were not at any time in any manner interested in the store at Chititu, or had any interest in the goods contained therein.

As far as the plaintiff in this action is concerned, it is admitted that exhibit "A" offered in the deposition of W. C. Prater is a transcript of the books of the Carstens Packing Company and makes no objection on account of its not being the original entry of the account therein set forth.

By the COURT.—The objection to the letter will

be overruled and plaintiff allowed an exception.

The letter is marked "B," admitted in evidence and read to the jury by Mr. Dimond, as follows:

[Exhibit "B" Attached to Deposition of Alex G. Wilson.]

Seattle, Wash., June 5, 1907. [310—292]

Mr. Alex G. Wilson,
Chititu, Alaska.

Dear Sir:

We have sold our interest in the stock, etc., on Chititu and at Tonsina to Mr. A. J. Fagerberg. Mr. Carstens thought it best to dispose of our interest there and I acquiesced.

Please remain with Mr. Fagerberg until he gets familiar with the business or longer if he desires and when you take the inventory—as I expect you will do at once upon his arrival—have same made up same as when you took over the stock, and have it receipted for by him.

I would like very much to see the liquors disposed of this season but this is up to Mr. Fagerberg now.

If you want to go prospecting during the bal. of the season for our joint account would like to have you do so.

Please make up statement and send same to us along with what money you have on hand at your earliest chance, and let me know just where you intend to go if you do not remain in there and where I may meet you.

Yours in haste,

(Signed.) HERMAN MEYER.

Will write you fully in next mail.

State of Washington,
County of King,—ss.

**[Certificate of Notary Public to Depositions of
Thomas Carstens et al.].**

I, B. A. Northrup, a notary public in and for said county, do hereby certify that the witnesses in the foregoing depositions, named Thomas Carstens, W. C. Prater, Herman Meyer, Alex Wilson and Henry Wolf, were by me duly sworn; that the said depositions were then taken at the time and place mentioned in the annexed Stipulation, to wit, at the office of Lyons & Orton, in the Alaska Building, in the County of King, State of Washington, and on the 21st day of January, 1915, between the hours of 2:00 P. M. and 5:00 P. M. of that day; that said depositions were reduced to writing by Mrs. B. B. Dearborn, a qualified stenographer, and when completed were carefully read by said witnesses and being by them corrected, were by them subscribed in my presence.

Witness my hand and official seal this 5th day of March, 1915.

[Seal] (Signed) B. A. NORTHROP,
Notary Public.

Mr. LYONS.—I will now read the depositions of Alex Wilson and C. I. Range, taken in accordance with the following stipulation: **[311—293]**

*In the District Court for the Territory of Alaska,
Division Number Three.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal for
the Third Division of the Territory of Alaska,
and JAMES M. MILLSAP, Deputy United
States Marshal for the Third Division of the
Territory of Alaska,

Defendants.

**Stipulation to Take Depositions [of Alex Wilson
and C. I. Range].**

IT IS HEREBY STIPULATED AND AGREED
by and between all of the parties to the above-en-
titled action, by their respective attorneys, that the
depositions of Alex Wilson and C. I. Range may
be taken at the offices of Lyons & Orton, in the
Alaska Building, at the City of Seattle, State of
Washington, on the 23d day of January, 1915, before
B. A. Northrup, a Notary Public in and for the State
of Washington, commencing at the hour of 4:00
o'clock P. M. and continuing until both of said depo-
sitions are taken; that such depositions may be taken
upon oral interrogatories propounded by the coun-
sel at the time; that when such depositions are taken
they shall be forwarded to the clerk of the above-
entitled court at Valdez, Alaska, and that said depo-
sitions may be read in evidence by either of the

parties hereto on the trial of the above-entitled action, subject only to objections on account of incompetency, irrelevancy and immateriality.

Dated at Seattle, Washington, this 23d day of January, 1915.

DONOHOE & DIMOND,
Attorneys for Plaintiff.

LYONS & RITCHIE and
LYONS & ORTON,
Attorneys for Defendants. [312—294]

*In the District Court for the Territory of Alaska,
Division Number Three.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal for
the Third Division of the Territory of Alaska,
and JAMES M. MILLSAP, Deputy United
States Marshal for the Third Division of the
Territory of Alaska,

Defendants.

Depositions [of Alex Wilson and C. I. Range.]

BE IT REMEMBERED that, pursuant to the stipulation hereunto annexed, and on the 23d day of January, 1915, at Seattle, in the County of King, and State of Washington, before me, B. A. Northrup, a Notary Public in and for said County of King, personally appeared Alex Wilson and C. I. Range, witnesses, produced on behalf of said defendants,

(Deposition of Alex Wilson.)

in the above-entitled action, now pending in the said court, who, being by me first duly sworn, were then and there examined and interrogated by Mr. Thomas R. Lyons, of counsel for the said defendants, and Mr. T. J. Donohoe, of counsel for said plaintiff, and testified as follows:

[Deposition of C. I. Range, for Defendants.]

Direct Examination of C. I. RANGE, Conducted by
Mr. THOMAS R. LYONS, Attorney for the
Defendants.

(Read by Mr. LYONS.)

Q. State your name and place of residence.

A. C. I. Range, 5721 Woodland Avenue, Seattle.

Q. Did you ever live in Alaska?

A. Yes, I have been in Alaska for almost 18 years.

Q. Were you ever at Blackburn and Chititu, in the Third Division of Alaska?

A. Off and on since 1903.

Q. Were you acquainted with J. A. Fagerberg?

A. Yes, sir.

Q. Are you acquainted with H. M. Fagerberg, the plaintiff in this action? [313—295] A. Yes.

Q. Are the two Fagerberg boys brothers?

A. Claim to be.

Q. How long have you known the Fagerberg brothers?

A. I have known Al for about 12 years.

Q. Al is J. A., is he not? A. Yes.

Q. He is known as Al? A. Yes.

Q. How long have you known H. M. Fagerberg?

A. I have not known him so long, only for about

(Deposition of C. I. Range.)

six or eight years.

Q. H. M. is known as Harry Fagerberg?

A. Yes.

Q. Did you ever have any business dealings with either of the Fagerberg Brothers, or both of them?

A. Yes.

Q. When? A. In 1911 and 1912.

Q. Where?

A. At McCarthy, or Blackburn as it is now called, I believe.

Q. What business were you engaged in?

A. Foreman for the Dan Creek Mining Company.

Q. Foreman for the Dan Creek Mining Company?

A. Yes.

Q. During all of 1911 and 1912?

A. During 1911, 1912 and 1913.

Q. What business was J. A. Fagerburg engaged in at that time?

A. In the packing business and had a store at Chititu, and also had a store and hotel there at Blackburn.

Q. Was the hotel sometimes called a roadhouse?

A. Yes. [314—296]

Q. What business was H. M. Fagerberg engaged in at that time?

A. He was in the same business.

Q. In the same business as his brother? A. Yes.

Q. State whether or not they worked in the store and in the hotel together, or around the hotel and store together. A. Yes.

Q. They did? A. Yes.

(Deposition of C. I. Range.)

Q. During all of the time you mention?

A. Yes.

Q. Did you ever see any billheads of J. A. Fagerberg or H. M. Fagerberg, or Fagerberg Brothers?

Plaintiff objects to the last part of the question as to the billheads of Fagerberg Brothers, on the ground that it is not the best evidence, the billheads themselves being the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. Why, I did have several billheads until last summer, when I destroyed all my old receipts to make room for new ones.

Q. You say you had several billheads, but that you have destroyed them?

A. Yes, of Fagerberg Brothers.

Q. The billheads were billheads of Fagerberg Brothers?

Plaintiff makes same objections—not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. Yes, they were.

Q. State whether or not these billheads were ever used by Fagerberg Brothers in their relations with you? A. Yes, several of them.

Q. In what way?

A. Stuff that I bought there. [315—297]

Q. You bought goods from them? A. Yes.

Q. During what part of the time?

A. During 1911 and 1912.

(Deposition of C. I. Range.)

Q. Did you buy on credit?

A. I had it charged until I got through with my haul, and then I settled the whole thing, the Dan Creek Mining Company bill and my own bill.

Q. You say you bought provisions, goods, wares and merchandise from Fagerberg Brothers?

A. Yes.

Q. And they afterwards presented bills to you?

A. No, I don't know that they presented bills, but I went and paid them in the store.

Q. But in their account with you, on what billheads did they have your account stated?

A. Fagerberg Brothers.

Q. Fagerberg Brothers? A. Yes, sir.

Plaintiff moves to strike the last answer as not the best evidence, as the billheads speak for themselves.

Objection overruled. Plaintiff allowed an exception. (Motion denied.)

Q. Did you ever have any conversation during the year 1911 or 1912 with H. M. Fagerberg, the plaintiff in this action, with reference to any business relationship that existed between himself and J. A. Fagerberg? A. Yes, sir.

Q. When and where was such conversation had?

A. It was in our mess tent on Dan Creek. [316 — 298]

Q. When did that conversation take place?

A. In 1912, in April, I think.

Q. You think it was in April, 1912? A. Yes.

Q. Who were present when this conversation took place?

(Deposition of C. I. Range.)

A. That I cannot tell you; a man working for him that I could not tell you his name.

Q. Can you state the substance of that conversation? A. I can.

Q. Please do so.

A. It came up with regard to their business over there, they had some trouble about their business; he was talking to me about it, Harry Fagerberg was, and I asked him how he was situated over there, and he said he owned a half interest in the whole thing, and that they were trying to beat him out of it, and I said to him that I would take a club and drive them out if I was in his place.

Q. Drive who out?

A. Al and a lady who was there.

Q. Some woman—do you know her name?

A. Mrs. Damon.

Q. Now, when Harry Fagerberg stated they were trying to beat him out of his interest, to whom did he refer? A. Al and the woman.

Q. And I understand you to state that he said he owned a one-half interest in everything?

A. Yes, everything they had, the Chititu store and the roadhouse, and store over there at Blackburn, and the mine on Dan Creek. [317—299]

Cross-examination of C. I. RANGE, Conducted by
T. J. DONOHOE, Attorney for the Plaintiff.

(Read by Mr. DIMOND.)

Q. Mr. Range, these goods you say you bought; who did you buy them from? A. Al Fagerberg.

Q. Who did you buy them for?

(Deposition of C. I. Range.)

A. Some for myself, and some for the boys working on Dan Creek.

Q. Now, were these bills rendered to you?

A. To me.

Q. To you?

A. Yes. I had full charge of the Dan Creek Mining Company at that time.

Q. When did you have full charge?

A. Until Mr. Birch came in the spring.

Q. In what years? A. 1911, 1912 and 1913.

Q. And each year you would have full charge of the mine for how long? A. Three months.

Q. Commencing when?

A. January 1st we would leave here, and take in about \$200.00 worth of supplies each year.

Q. Have you ever been in the Shushana country?

A. Yes.

Q. Have you any connection with the Carstens Packing Company? A. No.

Q. Or with Mr. Carstens?

A. No, I do not know the gentleman.

Q. How long have you known the Carstens Packing Company? A. I don't know them.

Q. How long have you known Mr. Prater?

A. Met him yesterday. [318—300]

Q. How long have you known Thomas Carstens?

A. I don't know him at all.

Q. When did this conversation between you and H. M. Fagerberg take place?

A. Some time in April, 1912.

Q. In April, 1912—this is now almost three years

(Deposition of C. I. Range.)

ago, is it not? A. Yes.

Q. Now, to whom did you first speak of this conversation?

A. The people up there talked it, I do not know just who, we talked it among ourselves.

Q. You remember the substance of this conversation very clearly, do you? A. Yes, sir.

Q. Now, just state some other conversation you had with him about the same time.

A. The same time?

Q. Yes, three years ago.

A. Different things, about having to have caches up there.

Q. Now, is your memory so good that you would remember a casual conversation three years?

A. My memory is pretty good; I can remember some things that happened when I was three years old.

Q. You told Mr. Wilson of this conversation, did you not, yesterday? A. No.

Q. When did you tell Mr. Prater about it?

A. About four o'clock yesterday.

Q. You have business relations with Mr. Prater?

A. No, sir, I met him yesterday for the first time in my life.

Q. Will you kindly state what was the occasion of calling this conversation to your memory after a lapse of three years?

A. What was the cause of it? [319—301]

Q. Yes.

A. They asked me if I knew certain things about Fagerberg.

(Deposition of C. I. Range.)

Q. Who asked you? A. Mr. Prater.

Q. And you never met him until yesterday?

A. No, sir.

Q. How came he to ask you about it?

A. Mr. Wilson called me up over the telephone in the forenoon, and asked me if I had any billheads of the Fagerberg Brothers, and I told him I did not know, that I would look, but that I had destroyed a good many of my old receipts, and thought I had destroyed them.

Q. How long have you known Mr. Wilson?

A. For about 11 years—I think it was in 1903.

Q. And that is what recalled this conversation to your memory, was it? A. Yes.

Q. Later in the day you met Mr. Wilson and talked over the situation?

A. No, not about that situation, not about Harry and my conversation; that was after this gentleman came in.

Q. You came down at his request to see Mr. Prater, did you?

A. Yes, he said he had some things he wanted to talk over with me, and I told him I would be down in the afternoon.

Q. Are you still with the Dan Creek Mining Company? A. No, I am not.

Q. Now, what was the amount of charge against the Dan Creek Mining Company on the billhead that was rendered to you in 1912?

A. The exact account I cannot state, but I think it was about \$140.

(Deposition of C. I. Range.)

Q. Do you say it was \$140?

A. Something like that—one bill I paid was \$170.

Q. State the amount of your bills in 1913?

A. I cannot say as to that. [320—302]

Q. You cannot remember?

A. I could not say—I paid my bills.

Q. What was the particular thing that impressed the fact that it was Fagerberg Brothers on these bills, in your mind?

A. It was printed in big letters.

Q. What other billheads did you get that year? What was printed on the other billheads?

A. I never got any after that spring. I never had any dealings with them after 1912.

Q. Did you not have any dealings with them in 1913? A. No.

Q. In 1911? A. Yes.

Q. What dealings in 1911?

A. During the month of February, while I was hauling freight.

Q. From where? A. From Blackburn.

Q. To Dan Creek? A. Yes.

Q. With whom did you have the dealings at that time? A. With Al Fagerberg.

Q. To whom did you pay the money?

A. To Al; I never paid to Harry in my life.

Q. You made your contract twith J. A. Fagerberg and paid J. A. Fagerberg the money?

A. Yes, sir.

Q. You never paid Harry any money? A. No.

Q. Never made any contracts with him?

(Deposition of C. I. Range.)

A. No. Harry was most of the time tending horses, and packing, and such like, and was over to Chititu—over there some of the time [321—303]

Q. What is your occupation now?

A. Placer mining.

Q. Are you working in Alaska yet? A. Yes.

Q. In Shushana? A. Yes.

Q. You severed your connection with the Dan Creek Mining Company in 1913? A. Yes.

Q. At the end of the season. A. Yes.

Q. Now, what were the names—just describe what was on that billhead that you speak of?

A. I can only describe it in this way, that at the top was printed Fagerberg Brothers, across the top, Groceries and General Merchandise.

Q. The last bill you got of this kind was in 1912?

A. Yes.

Q. During all of the time from 1912 until yesterday, you had no occasion to think about that billhead? A. Why, yes, sir.

Q. When did you think about it?

A. Last fall when I burned them up.

Q. Why did you?

A. Because I was going over my old billheads, because I was making room, and all of the old bills were paid, and so they were of no more use to me, and I put them in the fire.

Q. Did you not turn the bills over to the Dan Creek Mining Company?

A. Yes, their bills, but these were my own particular bills.

(Deposition of Alex Wilson.)

Q. When did you get your particular bills?

A. At the same time. [322—304]

Q. For what?

A. There were shoes, boots, sacks, mittens for myself and the boys who were working for me—I had them charged to me.

Q. Why?

A. Because the boys had no money to pay for their things, so I paid for them, and they paid me.

Q. The Dan Creek Mining Company did not hold it out? A. No, the boys paid me.

Q. Now, what was the amount of this bill of yours that you got—these goods that you speak of?

A. There were several bills, one of them was for \$20.00 or \$25.00, or some \$5.00 or \$6.00, one I remember was \$10.00 for a gallon of syrup.

Q. You stated in your examination that H. M. Fagerberg was in the business at Blackburn in 1911—am I right in that? A. Yes.

Q. How do you know that he was there in any capacity other than as an employee of J. A. Fagerberg?

A. All I know is from what Harry told me, and from the billheads.

Q. You know nothing else as to the claim that he was in partnership with J. A.?

A. Nothing but what he told me—and the billheads as Fagerberg Brothers.

Q. You had just that one conversation with him in the mess tent of the Dan Creek Mining Company?

A. Yes.

(Deposition of C. I. Range.)

Q. Did you know Harry Fagerberg intimately?

A. Pretty intimately; he had slept with me in my office, and had eaten at my table. I had fed them both a lot.

Q. Were you a particular friend of Harry's at that time? A. A pretty good friend. [323—305]

Q. When did this conversation take place?

A. About 1912.

Q. You did not meet him in 1913, did you?

A. I saw him several times, yes.

Q. Have any conversation with him? A. No.

Q. And you cannot remember any other conversation in detail that you had with him in 1911 or 1912?

A. Why I—not in particular, only in talking with him about business, or something like that, how he was making it in the packing and store business.

Q. But you remember that one conversation in detail?

A. Yes, because of the points which fetched up this conversation, and I rather think Harry will remember it just as well as I do.

Q. How do you know this conversation took place in April of 1912?

A. It was after or just about the time that I was half through freighting that I went up there to the camp, and he was stopping at my place up there, and I gave him the key to the cook tent during the time he was putting in caches there.

Q. During all of this time nothing else has occurred to call your attention to this conversation until Mr. Wilson called you yesterday?

(Deposition of C. I. Range.)

A. Why, yes, talking with the other boys up there about how the brothers had treated one another; different conversations about the trouble between the Fagerbergs.

Q. Now, what was this talk you had about how they had treated one another?

A. This trouble between Al and Harry, and as I told you, I told him I would go over there and take a club and drive Al out.

Q. The trouble was about money matters between Al and Harry? [324—306]

A. Yes.

Q. You had no occasion to recall this conversation since 1912?

A. I have talked with fellows coming out this fall.

Q. Name the people you talked with, please.

A. Different ones of the old Alaskans.

Q. You cannot remember who you discussed it with by name?

A. Well, I think I discussed it with Mr. Foster, this last trip coming down—H. D. Foster, he is a miner.

Q. Is he an old-timer? A. Yes.

Q. How long has he been in there?

A. About ten years; ten years ago this last summer I met him.

Q. How came you to discuss it with him?

A. He was acquainted with the same matter, and we got to discussing the lady and where she was, and I asked if they were still in partnership, and he said he did not know, but that they seemed to be work-

(Deposition of C. I. Range.)

ing together this year.

Q. When? A. This fall coming out, in 1914.

Q. What boat? A. Mariposa.

Q. Where did you take the Mariposa?

A. Cordova.

Redirect Examination of Mr. RANGE, Conducted
by Mr. THOMAS R. LYONS, Attorney for De-
fendants.

(Read by Mr. DIMOND.)

Q. Counsel asked you if there was any circumstances which would recall this conversation or impress it on your mind, and among other things you stated that you had told Harry what you would have done to his brother if he had treated you as he treated [325—307] him. Now, after that conversation, was there anything—any difficulty, between the brothers about money matters?

A. Yes, a first fight and knockout, with, I thing an iron poker.

Q. Did not that tend to impress the conversation on your mind?

A. Yes, and to different ones I have said since that it was too bad Harry did not kill him, and that it was a wonder he did not kill Harry.

Q. Who?

A. Al, it was a pity Harry did not kill Al.

Recross-examination of Mr. RANGE, Conducted by
Mr. T. J. DONOHOE, Attorney for the Plain-
tiff.

(Read by Mr. DIMOND.)

Q. Then in your opinion, Mr. Range, Al Fagerberg

(Deposition of C. I. Range.)

has treated Harry rather poorly, has he not?

A. That was my opinion at the time.

Q. That is your opinion still is it not, that he did not give Harry a square deal?

A. I am satisfied that he did not give him a square deal.

Q. Were you present when that fight occurred?

A. I was not in the house, I was out at one of the other places, I did not see the row.

Q. When did that fight occur? A. In 1912.

Q. What month, and what day of the month?

A. It must have been in April, just after I had the talk with Harry, about two days after.

Q. In April of 1912, and occurred in Blackburn?

A. Yes.

Witness excused.

(Signed.) C. I. RANGE. [326—308]

**[Deposition of Alex Wilson for Defendants
Recalled—Redirect Examination).]**

(Redirect Examination of Mr. ALEX WILSON,
Conducted by Mr. THOMAS R. LYONS, Attor-
ney for the Defendants.

(Read by Mr. LYONS.)

Q. Have you any bill in your possession of Fager-
berg Brothers A. Yes, sir.

Q. Would you exhibit it? A. Yes, sir.

Q. Where did you get this bill?

A. I got that bill about two hours ago from Mr.
Steele—Mr. William Steele.

Q. Who is William Steele?

(Deposition of Alex Wilson.)

A. He is an employe of the Westover Copper Company on Dan Creek.

Q. I call your attention to the bill which you have exhibited, and ask you whose writing that is, Fagerberg Bro. by H. M. Fagerberg?

A. H. M. Fagerberg, his signature.

Defendants now offer in evidence the bill concerning which the witness has just testified, and identify the same as follows: A bill of the Alaska United Copper Ex. Co. to Fagerberg Bros. Dr., dated April 1, 1913, receipted as follows: Paid April 11, (or apparently 11), 1913, Fagerberg Bro. by H. M. Fagerberg, the total amount of the bill being \$91.30, and ask that the same be marked Defendants' Exhibit "C."

To which offer plaintiff objects on the ground that there is no evidence to show that the bill offered in evidence was a bill in any manner connected with the Fagerberg Bros., or H. M. Fagerberg, in the transactions had in Alaska or with this action; and second, for the reason that the witness Wilson has in no manner qualified so as to show his ability to recognize the handwriting of or the signature of H. M. Fagerberg.

Objection overruled. Plaintiff allowed an exception.

The bill is marked Defendants Exhibit "C" and admitted in evidence—It reads as follows: [327—309]

**Defendants' Exhibit "C"—Attached to Deposition
of Alex. Wilson.**

April 11, 1913.

Alaska United Copper Ex. Co.

To Fagerberg Bros. Dr.

J. Petrie	\$10.75
J. Finnigan	29.25
H. D. Foster.....	29.80
J. Conway	21.50

Total.....\$91.30

Paid April 11, 1913.

FAGERBERG BRO.

Per H. M. FAGERBERG.

Q. Are you familiar with the handwriting of H. M. Fagerberg?

A. All I know is, it corresponds with the signatures I have of Harry Fagerberg's; the writing is identically the same.

Q. Have you seen several signatures which you knew to be the signatures of H. M. Fagerberg?

A. Yes.

Q. Then you are familiar with his signature and his handwriting?

A. Not with his handwriting, but with his signature.

Q. From what you know of his handwriting and his signature, you testify that this is the signature of H. M. Fagerberg? A. Yes.

Recross-examination of Mr. WILSON, by T. J. DONOHOE, Attorney for the Plaintiff.

Q. When did you receive the last receipt signed

(Deposition of Alex Wilson.)

by H. M. Fagerberg, Mr. Wilson? A. In 1907.

Q. 1907? A. Yes.

Q. Now over seven years, is it not? A. Yes.

Q. How many receipts have you ever received from H. M. Fagerberg? [328—310]

A. I don't know—let me see, I have got them copies, all them copies, I know, and the bill of sale of the Sourdough Cabins, and what was the other transaction?—There must have been another one, but I can't place it.

Q. Now, you have no receipts signed H. M. Fagerberg? A. Yes, I have.

Q. What one?

A. I have the Sourdough Cabins receipt, and the invoice of stock being turned over.

Q. That is two?

A. Yes—and the third one I cannot place.

Q. Now, you received two receipts from H. M. Fagerberg in 1907? A. Yes.

Q. Had you ever known him before that?

A. No.

Q. And how long did you know him afterwards?

A. About a month.

Q. With him a month? A. No, two weeks.

Q. Whatever time it took you to check up?

A. Yes.

Q. Now, I understand you to say you never met him until 1907, am I right in this? A. Yes, sir.

Q. Then you were with him less than two weeks?

A. About two weeks.

Q. And during that time he signed a receipt for

(Deposition of Alex Wilson.)

stock turned over at the Chititu store? A. Yes.

Q. Where is that receipt?

A. It is out there, and I have a copy of it down to the store. [329—311]

Q. And you sold him the Sourdough Cabins?

A. Yes, sir.

Q. What receipt did you get for the Sourdough Cabins? A. I have that too.

Q. What did he give you in connection with the Sourdough Cabins? A. A receipt.

Q. Why? A. I turned them over to him.

Q. You sold him the Sourdough Cabins and gave him a bill of sale for them?

A. I turned them over to him.

Q. You turned them over to him and he gave you a receipt for them?

A. They belonged to the Nizina Trading Company, and I turned them over to him.

Q. Then you got two receipts from him, one for the Sourdough Cabins and one for the stock of goods turned over to him in April, 1907? A. Yes, sir.

Q. And you have never seen this signature since that time? A. Yes, I have.

Q. During the past few days? A. Yes.

Q. What was the receipt—what receipt did you look over during the past few days?

A. Principally the invoice receipt.

Q. So you think you can identify the signature on this exhibit? A. Yes.

Q. Did you compare it with the signature on the invoice receipt?

(Deposition of Alex Wilson.)

A. No, I did not take it down to the store to compare it, but I would know that signature in a thousand years.

Q. You have looked your receipts over pretty carefully during the past few days? [330—312]

A. Yes, sir.

Q. Have you any interest in this suit?

A. No.

Q. What is your business?

A. Furniture business.

Q. What connection have you with Carstens Packing Company? A. None whatever.

Q. You have considerable enmity against both of the Fagerberg boys? A. None whatever.

Q. Then why are you showing such unusual activity in this particular suit?

A. Well, there are other reasons.

Q. Nothing to do with the Fagerbergs? A. No.

Q. Is that the best answer you care to make?

A. That is about all,

Q. You hunted up Will Steele did you?

A. Yes.

Q. When? A. This afternoon.

Q. Where did you find him, in the Washington Annex?

A. No, I found him in the Colman Block.

Q. And you induced him to give you that receipt?

A. The same as all the other boys would do favors for me,

Q. What do you mean,—other boys?

A. I mean that I am acquainted with.

Q. You think you are pretty popular?

(Deposition of Alex Wilson.)

A. With a certain class.

Q. And with another certain class you are not?

A. That is right, I guess.

Q. You called Mr. Range too, and brought him here as a witness? [331—313] A. Yes.

Q. And you are doing this for a compensation from Carstens Packing Company?

A. No, not a cent.

Q. Not a cent? A. No, nor never expect any.

Re-redirect Examination of Mr. WILSON, Conducted by Mr. THOMAS R. LYONS, Attorney for Defendants.

(Read by Mr. DIMOND.)

Q. You stated to Mr. Donohoe that there were other reasons—will you state why you are manifesting such an interest in this litigation—will you state what these reasons are?

A. There is a certain gang on that Creek that I do not like.

Q. Is that all? A. Yes.

Q. Well, would your dislike for any man up there make you take such an interest in this case as to color your testimony, either consciously or unconsciously?

A. No.

Re-recross-examination of Mr. WILSON, Conducted by Mr. T. J. DONOHOE, Attorney for the Plaintiff.

(Read by Mr. DIMOND.)

Q. Then the interest in this case that you are taking is all on account of your enmity for certain fellows on Chititu Creek?

(Deposition of Alex Wilson.)

A. Yes, I think that is about it.

Q. Neither Esterly or Kernan have anything to do with this suit, have they? A. No.

Q. But you are active in this suit on account of your enmity for certain fellows on Chititu Creek?

A. Not particularly that; I like to see a straight man treated right.

Q. Do you know anything about Harry Fagerberg that is not straight?

A. No, I don't. All I am in this for is to tell the transactions [332—314] that I was through, that is all I am here for.

Q. You told that the other day? A. Yes.

Q. At the same time, you have procured Mr. Range as a witness, and got this bill from Will Steele, all because you want to see Mr. Carstens treated right in this affair? A. Yes.

Q. You and Mr. Carstens are particular freinds, are you? We are not.

Q. And you have left your furniture business out of pure kindness of heart to Mr. Carstens?

A. I have left my business an hour at a time; I could have got many witnesses and a lot more bills, but I had no time.

Q. You spent an hour yesterday?

A. Yes, I spent an hour yesterday.

Q. You spent an hour procuring Mr. Range as a witness? A. Yes.

Q. Because of your desire to see an honest man get a square deal you are willing to devote an hour a day to this suit?

A. I would devote many an hour for that.

Witness excused.

(Signed.) ALEX. G. WILSON.

**[Certificate of Notary Public to Depositions of Alex
Wilson et al.]**

State of Washington,

County of King,—ss.

I, B. A. Northrup, a notary public in and for said county, do hereby certify that the witnesses in the foregoing depositions, named Alex Wilson and C. I. Range, were by me duly sworn; that said depositions were then taken at the time and place mentioned in the annexed stipulation, to wit at the offices of Lyons & Orton, in the Alaska Building, in the County of King, State of Washington, and [333—315] on the 23d day of January, 1915, between the hours of 4:00 P. M. and 5:30 P. M. of that day; that said depositions were reduced to writing by Mrs. B. B. Dearborn, a qualified stenographer, and, when completed, were carefully read by said witnesses, and being by them corrected, were by them subscribed in my presence.

Witness my hand and official seal this 5th day of March, 1915.

[Notarial Seal]

B. A. NORTHRUP,

Notary Public.

Mr. DIMOND.—I think that completes the depositions.

By the COURT.—Have you any further testimony, Mr. Lyons?

Mr. LYONS.—I want to read to the jury exhibit “C” attached to the deposition of Mr. Wilson being

a bill to the Alaska United Copper Ex. Co. to Fagerberg Bros.

By the COURT.—Very well.

(Mr. Lyons reads the exhibit to the jury; it already appears in this record.)

Defendants rest.

Mr. DIMOND.—We will call Mr H. M. Fagerberg in rebuttal. [334—316]

Rebuttal.

**[Testimony of H. M. Fagerberg, the Plaintiff,
Recalled in His Own Behalf, in Rebuttal.]**

H. M. FAGEBERG, the plaintiff, recalled as a witness in his own behalf, in rebuttal, testified as follows:

Direct Examination.

(By Mr. DIMOND.)

Q. You heard the testimony of Mr. Wilson read here? A. Yes, sir.

Q. Mr. Wilson says in his direct examination that he turned over to you and left with you, along with the other goods in the Chititu store, furs to the value of not less than \$4,000—what would you say as to the truth of that statement of Mr. Wilson?

A. Why, it is not a correct account.

Q. I will hand you a paper dated April 1, 1908, and ask you to state what it is. (Handing witness paper.)

A. This is the sales of the furs—the report from the McMillan Company, the McMillan Fur Company.

Q. Will you state whether or not that contains a list of all the furs turned over to you by Mr. Wilson in 1907? A. Yes, and a few more.

(Testimony of H. M. Fagerberg.)

The statement of McMillan & Co. is admitted in evidence without objection, marked Plaintiff's Exhibit "J."

Mr. DIMOND.—Gentlemen of the Jury, I will state that this is the list of furs receipted for by the McMillan Fur Company at Minneapolis, Minnesota. The total amount shown on the bill is \$1,057.14, from which a deduction has been made for express of \$40.50, leaving a net value of \$1,016.64.

Q. Now, Mr. Fagerberg, will you state what proportion of the amount of these furs were your own and what were turned over to you by Mr. Wilson?

A. \$123 is furs I caught myself, personally, and then there was ten skins, lynx skins, that I had bought myself.

Q. What was the value of those lynx skins, if you know?

A. Well, to put a fair price on them, \$8. [335—317]

Q. You bought ten? A. Yes, sir.

Q. That would be a total of eighty dollars?

A. Yes, sir.

Q. Then this value placed upon them by you in the pencil notation on this exhibit "J" is too high—it should be 80 instead of 100? A. Yes.

Q. Where did you get the money to purchase those skins? A. Out of the merchandise.

Q. That you sold up there at the store?

A. Yes, practically taken in trade.

Q. You have also heard Mr. Wilson's testimony that he took out only five or six skins—what have you

(Testimony of H. M. Fagerberg.)

to say as to that? A. It is not a correct statement.

Q. What did he take out?

A. Well, he took out nearly—in the neighborhood of \$450 or \$475 worth.

Q. State what those skins were, if you know.

A. There was one crossed silver gray fox practically worth \$250. There were twelve lynx skins, the best lynx skins there were in the house—he took those out himself.

Q. What was the value of those lynx skins?

A. \$8.00.

Q. What else? A. There were six other skins.

Q. How much were they worth?

A. About ten dollars.

Q. And what else? A. Five beaver.

Q. What was the value of the beaver?

A. About \$6.00. [336—318]

A. Apiece you mean? A. Yes, apiece.

Q. Did he state to you why they were taking these skins out? A. To cover their wages.

Q. What wages do you refer to?

A. From the Nizina Trading Company, what was due them; they had not taken in enough money to cover their salary.

Q. They took the skins out to protect themselves?

A. Yes, sir.

Q. (By JUROR.) Was it sea otter or land otter?

A. It was land otter.

Q. You have heard the testimony of Mr. Range concerning a conversation that he had with you in 1912, in which he states as follows: "It came up with

(Testimony of H. M. Fagerberg.)

regard to their business over there, they had some trouble about their business; he was talking to me about it, Harry Fagerberg was, and I asked him how he was situated over there, and he said he owned a half interest in the whole thing, and that they were trying to beat him out of it, and I said to him, 'that I would take a club and drive them out if I was in his place' ''—did you make such a statement to Mr. Range?

A. I didn't tell him that I owned a half interest in the business—I told him in these words, that I had practically put up half the money to build up the business and I had done the work and didn't intend to be skinned out of it, but I didn't refer to Mrs. Damon when I made the statement that they were trying to beat me out of it.

Q. Whom were you referring to?

A. I was referring to Al and Carstens.

Q. You recollect having this conversation?

A. I do, yes, sir.

Q. Where did it take place? [337—319]

A. At Dan Creek.

Q. What money did you refer to when you mentioned about this money you spoke of?

A. Money I had let them have from my salary.

Q. Now, I wish to call your attention to Defendant's Exhibit "C" attached to the deposition of one of these gentlemen and here offered in evidence. It is entitled Alaska Copper—Alaska United Copper Ex. Co. to Fagerberg Bros. Dr. and dated some time in April, 1913, and ask you to state whether that

(Testimony of H. M. Fagerberg.)

bill was made out by you?

A. The bill was not made out by me.

Q. Do you know who did make it out?

A. I don't know who made the bill out.

Q. Who is the Alaska United Copper Exploration Company?

A. The persons connected with it are Will Steele and Howard Foster.

Q. You signed that, did you?

A. Yes, I signed it.

Q. And you say you didn't make the bill out—it was presented to you in that manner?

A. Yes, it was presented to me in that manner, and I signed it that way and returned it myself.

Q. Where did you get the bill?

A. I don't know where it came from, I don't know who made it out—I was left in charge there by my brother when he was outside and the bill came to me that way and I supposed it was a bill—I didn't know anything about, so I just signed and returned the bill to him.

Q. Signed it in the same manner it was made out?

A. Yes, signed it in the same manner it was made out.

Mr. DIMOND.—That's all. [338—320]

Cross-examination.

(By Mr. RITCHIE.)

Q. As I understand it most of these furs that were shipped to the McMillan Fur Company and catalogued here were furs you bought there and furs you caught? A. No, not most of them.

(Testimony of H. M. Fagerberg.)

Q. A small part of them?

A. A small part of them.

Q. More than half of them were left there by Wilson? A. Yes, sir, more than half of them.

Q. And there were some you bought out of the proceeds of the store sales? A. Yes, sir.

Q. \$123 worth belonged to you? A. Yes, sir.

Q. The total value of all the furs here, not allowing for deductions, is \$1,057? A. Yes, sir.

Q. That is the price the furs brought in Minneapolis, the furs bought by the McMillan Company?

A. Yes, sir.

Q. These furs all belonged to whoever was the owner of the store then, except your share of them?

A. Yes, sir.

Q. I see this statement is addressed to J. A. Fagerberg—they were shipped in J. A. Fagerberg's name?

A. Yes, I believe so.

Q. The business was done rather indiscriminately there in the name of J. A. Fagerberg and Fagerberg Brothers, was it not? A. Rather, yes.

Q. Now on this exhibit that Mr. Dimond just called your attention [330—321] to—exhibit "C," attached to the deposition of Mr. Wilson—you said you did not make it out and that is easy to believe, it is not in your handwriting, but the signature, Fagerberg Bro. per H. M. Fagerberg—all of that is yours, is it not?

A. Yes, I don't deny that at all.

Q. Breedman & Church were paying how much per month up there? A. \$200 per month.

(Testimony of H. M. Fagerberg.)

Q. How much of that rent did you collect personally?

A. I didn't collect any of the rent personally, myself.

Q. It was all paid to Al?

A. It was paid into the bank, Blum & Company.

Q. On account of the mortgage? A. Yes, sir.

Q. Who signed that mortgage?

A. Al signed it and I signed it too.

Q. You both signed it? A. We both signed it.

Q. Signed the notes and mortgage?

A. I don't recollect whether I signed the notes or not—I signed the mortgage.

Q. You are not certain about the notes?

A. I am not certain about the notes.

By the COURT.—Is that all paid for, that indebtedness? A. No, it is not.

By the COURT.—What balance remains?

A. About \$200 and interest.

Mr. RITCHIE.—Is the note held in Cordova?

A. Yes, sir.

By the COURT.—Cut down from \$2,600 to \$200?

A. Yes, sir. [340—322]

(By Mr. DONOHUE.)

Q. That mortgage was originally for \$3,000, or do you remember?

A. I don't just recollect—it seems to me it was \$2,600.

Q. When you took the bill of sale from Al, that is the time you are basing your recollection that it was then \$2,600? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

(By the COURT.)

Q. When was that note and mortgage given, what year? A. 1912.

Q. And what was it for, what was the indebtedness incurred for? A. Merchandise and supplies.

Q. And was it paid off out of the general profits or moneys received in the business? A. Yes, sir.

Q. The roadhouse as well?

A. I suppose it was—I don't know anything about the paying of it, how it was paid, myself, but I imagine it was, but I know about the rent, that the rent applied.

Q. How long did Breedman & Church hold under their lease? A. They had a three-year lease.

Q. How many months did they hold it?

A. From November 1st, practically, 1912 to March 4, 1914.

Q. Then they held for something like sixteen months? A. Yes, sir.

Q. Did they pay \$200 per month rent for sixteen months? A. Yes, sir.

(By Mr. DONOHOE.)

Q. You have testified before that some time in the spring of 1912 you and Al Fagerberg had had a row up there over your wage account [341—323] and Mr. Malcolm Brock drew up a settlement for you under which Al agreed to pay you \$4,000. in full of all of your back salary? A. Yes.

Q. Was it about the time that Malsolm Brock drew up this settlement between you and Al that this mortgage was signed? A. The same time, yes, sir.

(Testimony of H. M. Fagerberg.)

Q. State the circumstances under which you signed that mortgage?

A. Mr. Brock insisted on my signing it—he said my name had been used in the business and he held me as responsible as he would Al—he looked at it that way and I signed it.

(By Mr. RITCHIE.)

Q. When was the last payment made on that note, if you know?

A. Mr. Church made the last payment—you mean on the mortgage?

Q. Yes, on the mortgage to Blum?

A. Church made the last payment, the last month he was there.

Q. There has been nothing paid since then, since Church was there a year ago? A. No.

Witness excused. [342—324]

**[Testimony of J. A. Fagerberg, for Plaintiff
(Recalled in Rebuttal).]**

J. A. FAGERBERG, recalled as witness in behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination.

(By Mr. DIMOND.)

Q. You have heard these depositions read?

A. Yes, sir.

Q. I wish to call your attention particularly to the deposition of Thomas Carstens in which he says that along in February, 1911—I will read a little of the deposition so that you may know the particular part I refer to. I am mistaken, it is the testimony of W. C. Prater I am referring to. I will read:

(Testimony of J. A. Fagerberg.)

“Q. What time was that?

A. It was—I think it was along in February, 1911.

Q. Did you have any conversation with him at that time with reference to the store at Chititu?

A. I did.

Q. What was that conversation?

A. He came to the office and said he was not satisfied with the conditions in the way he was operating there, and he did not think it was satisfactory to the company.

Q. To what company?

A. The Carstens Packing Company, or Thomas Carstens. He would like to know where he stood as to the Nizina store, so he would be in a position to handle it as he ought. I asked him if he did not want to buy the store; he said he would buy it, and I asked him what the stock was worth, and he said it was probably worth more than he would give for it, and I asked him what he would give, and he said \$10,000.00, but we would have to trust him for it. I immediately called up Mr. Carstens, and he said to have Mr. Fagerberg come to Tacoma, and he went to Tacoma the next day. What they did I really could not say, as I was not present—”

Q. Now, did any such conversation ever take place between you and Mr. Prater?

A. No, sir, it never did.

Q. Did you ever make him an offer of any kind for this property?

A. No, sir, I never offered him one red cent for it.

Q. Was the first agreement on which you first went in there ever changed in any manner?

(Testimony of J. A. Fagerberg.)

A. No, sir, it was never changed in any manner.

Q. Now, in the testimony of Mr. Carstens he says practically the same thing—his testimony is as follows: [343—325]

“A. I kept after Fagerberg for several years to render a settlement which he promised to make, but he never did, so finally, I believe it was in 1911, or about that time, I made a settlement in which Fagerberg and myself agreed on \$10,000.00.

Q. That is, he was to pay the Nizina Trading Company \$10,000 for that store and the stock of goods therein contained at Chititu?

A. He was to pay \$10,000 for the stock of goods in the store at Chitifu, yes.

Q. Did he ever pay you that \$10,000 or any part of it? A. Nothing, etc.”

Q. Did any such agreement ever take place between you and Thomas Carstens in the spring of 1911?

A. I was never in Tacoma.

Q. Answer the question, yes or no. A. No.

Q. Did you ever have any conversation with Mr. Carstens concerning the sale and purchase of the store at Chititu or any other property up there?

A. No, sir, I did not. In the spring of 1911 I was only two weeks in Seattle and there was only one week I was in touch with Mr. Prater at all.

Q. Did you see Mr. Carstens on that trip at all?

A. No, sir; I did not; I was not even in Tacoma; I didn't have the time; I got to Seattle the 24th of January and left on the 8th of February.

Q. Did you ever tell Mr. Carstens or tell Mr.

(Testimony of J. A. Fagerberg.)

Prater that Harry was a partner of yours in the business?

A. I absolutely never told Tom Carstens or Mr. Prater that Harry was a partner of mine in any transaction whatever.

Q. And they always knew what the real relations were between you?

A. They knew what the real relations were when I went in there in 1907 and at all times; they even knew the relations at Kennecott and my reason for putting the buildings up there.

Q. Did you ever receive a letter from Mr. Carstens or Mr. Prater [344—326] or any officer of the Carstens Packing Company wherein he referred to H. M. Fagerberg as a partner of yours in the business? A. No.

Q. Did you ever receive a letter in which they officially acknowledge that you alone were running the business and they had an interest in the business with you? A. Yes, sir.

Q. I hand you a letter dated July 22, 1912, signed by Carstens Packing Company, Thomas Carstens, and ask you to state what that is—is that Mr. Thomas Carstens' signature? (Handing witness letter.)

A. Yes, sir, it is. It is a letter I received from Tom Carstens dated July 22, 1912.

The letter is offered in evidence, admitted without objection, marked Plaintiff's Exhibit "K," and read to the Jury by Mr. Dimond, as follows:

**Plaintiff's Exhibit "K" [Letter, July 22, 1912,
Carstens Packing Co. to Fagerberg].**

Tacoma, Wash. July 22, 1912.

J. A. Fagerberg,
 Kennecott, Alaska.

Dear Sir:

Received your telegram last night saying to ship without any one in charge. I understand the last cattle went up and the boat people did not make stanchions for them nor did they put them in small pens and room left on the outside by sticking their heads on the outside to eat and drink. This time I will give strict instructions to have them go this way and to feed them on outside instead of where they are laying. If cattle are fed and watered in the same pens where they lay they will not get enough to eat and the feed they get will be wasted, but feeding and watering them on the outside, every bit of hay they will eat will be clean and it will do them lots of good.

The cattle we are shipping you are export cattle and are stall-fed. Grass cattle are not good yet and besides there are none big enough. Lucky I had these on hand and have a few left yet which I am holding on prime feed. Wish you would give me plenty of time when you want any more so as to get them ready.

I could write you a long letter, but see no use of it, but would like to have a personal talk with you regarding your affairs in [345—327] Alaska and if not mistaken believe this talk would result in great benefits to you. From what I can learn from Wolff you are in a position to make lots of money, provid-

ing everything is looked after close and you do business on strictly business lines. You have a first-class name in Alaska. I have talked with a good many miners and business men, and that name alone should see you through and make you money, but some of the same men who have a good opinion of you say in the last year you have been getting a little careless and seem to have trouble. This carelessness should be stopped at once and trouble could be eliminated if you go about it in the right way, for there is no use to do business when all your earnings go to expense, carelessness and other losses which should be stopped at once.

I believe I could help you a great deal if I knew just how you stood and how you do business, but am sure it cannot be done by writing letters. If you had somebody in your place and you could run down here for your next bunch of cattle, I believe it would pay you to come down and see us. You know exactly how we have treated you in the past and how we have trusted you and whether it is your fault or not, it would be some satisfaction for us to have a talk with you and know where we are at. Also whether we can help you any further or not, it is nice to have our confidence and friendship.

By your letter I am not able to tell much how you are doing and how you are getting along. Not getting any statements from you of any kind and not writing us pertaining to our business affairs we are entirely in the dark, but I hope you will admit we should not be, but in order to make lots of money and make a big man out of yourself, you must have our full confidence and cooperation for without that

(Testimony of J. A. Fagerberg.)

goodwill of everybody as a rule a man cannot go far in the world. You are made of the right stuff and I would like to see you get along and little troubles should not destroy what you have worked up for years. We may be able to advise you how to pull out of the hole and come out with flying colors. However we may not, but if you have a chance to come down here and have a talk with us it may do you a lot of good. Let me hear from you.

Respectfully Yours,

CARSTENS PACKING COMPANY,

THOS. CARSTENS. [346—328]

TC-AM.

Cross-examination by Mr. RITCHIE.

Q. Your personal relations with Mr. Carstens were always friendly up to the time you were last in Seattle, a year ago?

A. No, the tift between I and Carstens started in the fall of 1912—when I came out that fall the tift really started between I and Mr. Carstens and the Carstens Packing Company.

Q. It wasn't a serious matter?

A. It was just simply an argument of pros and cons—what had been coming on for years.

Q. Your personal relations with Mr. Carstens were always friendly—were always pleasant?

A. Pleasant, sure —naturally the argument of two men that were partners and dealing the way we had been dealing—

Q. Your relations and mutual confidence were such that in the spring of 1914, you felt warranted in send-

(Testimony of J. A. Fagerberg.)

ing to him for goods and drawing a sight draft for \$1,500 on him? [347—329]

A. Yes, and according to his own statements, under the agreements we had, the understanding we had, why it was perfectly right for me to draw that draft. I considered him in, just the same as I was—he was in the same position and I contend that this very minute, that Thomas Carstens and the Carstens Packing Company is just on the same footing that I am in.

Q. When you left Seattle in February, 1914, he hadn't signed any agreement with you in regard to this new proposition?

A. No agreement then any more than his word of mouth—the only thing I demanded of him in the fall when I went out was that letter.

Q. Now, you are sure, as to these conversations with Mr. Carstens and Mr. Prater, respectively, which you dispute, that they are wholly wrong in the statements they make?

A. Yes, I would swear on a stack of Bibles as high as this house that they are wrong on that talk, that they were in with me all the time, from the very time I took hold of the store that they were in with me on all transactions and they knew the argument when I put up the roadhouse and everything regarding that—they were not deceived in any way, and also in regard to the Krumm property—they induced me to go ahead and do it; I had their absolute confidence, also in regard to the money I got from them that I put into the house in Fourth Avenue, they knew

(Testimony of J. A. Fagerberg.)

every dog gone minute—they knew the conditions that Harry was working under at all times.

Q. As to this disputed conversation with Prater, you are sure your memory is better than his, your friend Bill's?

A. Yes—my memory is as good anyway.

Q. And your recollection of the conversation with Carstens is better than your old friend Tom's?

[348—330] A. It is as good as their's is.

Witness excused.

Testimony closed.

Jury excused until ten o'clock to-morrow morning.

[Motion for a Directed Verdict for Plaintiff, etc.]

By Mr. DONOHOE.—Plaintiff at this time, at the close of all the evidence in this case, moves the Court to direct the jury to find a verdict for the plaintiff in this action, that he is entitled to the possession of the property described in the Amended Complaint and that the jury shall then proceed on the evidence introduced in this trial, to determine by their verdict the value of the property and the amount of damages plaintiff has suffered by reason of being deprived of the property, if they find that the plaintiff has suffered any damages.

After argument by counsel, which was continued during the evening, a recess until eight o'clock having been taken for that purpose, the motion of plaintiff was denied and plaintiff allowed an exception to the ruling.

Whereupon Court adjourned until to-morrow, Thursday, May 13, 1915, at ten o'clock A. M.

Thursday, May 13, 1915. Morning Session.

Mr. RITCHIE.—Will your Honor pass on the motion to amend the Amended Complaint at this time?

[Order Allowing Motion to Amend Amended Complaint.]

By the COURT.—The amendment may be allowed.

To which ruling of the Court plaintiff is allowed an exception. Whereupon, after argument by counsel, the Court delivered his instructions to the jury, as follows: [349—331]

Instructions to Jury.

(By the COURT.)

Gentlemen of the Jury:

In this case the plaintiff by his Amended Complaint claims that the United States Marshal, F. R. Brenneman, by his deputy, James M. Millsap, wrongfully attached and took into his possession certain property, which plaintiff claims belonged to him. Plaintiff claims the value thereof to be \$8,350 and further claims that he is damaged by the wrongful withholding of such property in the sum of \$3,000 and the further sum of \$30 per day as continuing damages during the time same has been withheld from him,

The defendants, in their Answer to the Amended Complaint, allege that the said property was attached under and by virtue of a writ of attachment, issued in the action of Carstens Packing Company versus J. A. Fagerberg, and that the said property attached was, at the time of the attachment, the property of the said plaintiff, H. M. Fagerberg, and J. A. Fagerberg,

who were then and there copartners doing business under the name of Fagerberg Brothers.

The Answer further alleges that a bill of sale given by J. A. Fagerberg on July 15, 1913, to his brother, H. M. Fagerberg, the plaintiff herein, conveying the said property to the plaintiff, was fraudulent and given for the purpose of delaying, cheating and defrauding the creditors of the said firm of Fagerberg Brothers.

The plaintiff, in his Reply, denies that the said deed and bill of sale given by J. A. Fagerberg on the 15th day of July, 1913, to the plaintiff, H. M. Fagerberg, was fraudulent or given for the purpose of delaying, cheating or defrauding any of the [350—332] creditors of the plaintiff or J. A. Fagerberg, and alleges that said deed and bill of sale was given and received for an adequate and valuable consideration.

The main issue to be determined by you, therefore, in this case is very simple, to wit: Did the property in dispute, when it was attached, belong to the plaintiff, H. M. Fagerberg, in his own individual right, or was it partnership property belonging to J. A. Fagerberg and H. M. Fagerberg, doing business as a copartnership by the name of Fagerberg Brothers?

I will give you a few rules with regard to the law on partnership.

A general partnership is a voluntary contract between two or more persons for joining together the money, goods, labor and skill of either or all of them upon an agreement that the gain or loss shall be divided proportionately between them.

The jury are instructed that while as between the

partners themselves a partnership can only be created by agreement of the parties, yet persons who associate themselves together in business and hold themselves out to the world as partners, may be held liable as partners by third persons who have acted upon a reasonable assumption that such partnership existed, as shown by the acts and conduct of the alleged partners.

A dormant or undisclosed partner is liable for contracts made or goods purchased or benefits secured for him by the ostensible partner, and if an ostensible partner purchases [351—333] property on his individual credit for the use of the firm and the vendor or one selling the goods is not aware of the existence of the partnership, he may, when he discovers it, hold the firm liable for the price.

You are instructed that if a third person deals with one or two persons associated together in business, all contracts made with the person with whom the dealings are had are binding upon the associate, so far as he shares in the benefits of the transaction. To state this concretely, the rule means this: That if A and B are doing business together under a private arrangement, known only to themselves, but holding themselves out to the world as a partnership, and C sells goods to A and in A's name only, and the goods are placed in a stock controlled and handled by A and B jointly and B accepts and uses a part of the proceeds and this course of conduct continues for a considerable length of time, any liability arising on the part of A in favor of C by reason of such course of business and such transaction with C, also rests on B, and

B is liable to C the same as A, at least to the extent of the proceeds of such original transaction.

If it be shown that two men engage in business as partners at a certain time, the presumption is justified that they remain partners so long as they remain in business at the same place and in a general way, the same kind of business, unless in the meantime they have given wide public notice of the fact that their relations have changed and what their new relations are to be. [352—334]

Copartnerships are formed for joint purposes. The members undertake joint enterprises, they assume joint risks and they incur in all cases joint liabilities, Each copartner is bound for the entire amount due on copartnership contracts, and this obligation is so far several that if he is sued alone and does not plead the nonjoinder of his copartners, a recovery may be had against him for the whole amount due upon the contract, and a joint judgment against the copartners may be enforced against the property of each.

You are further instructed that if you believe from the evidence that J. A. Fagerberg and H. M. Fagerberg were copartners, then the possession of H. M. Fagerberg in the roadhouse or any other property of the copartnership would be the same as the possession of J. A. Fagerberg and that the partnership property would be subject to levy and attachment in the possession of either of the said partners.

If, however, you believe from a preponderance of the evidence that the plaintiff, H. M. Fagerberg, was the sole owner of said roadhouse and property de-

scribed in the plaintiff's Amended Complaint, then the defendants had no right to seize or take possession of said property under writ of attachment and your verdict should be for the plaintiff.

If you find from the evidence that the plaintiff, H. M. Fagerberg, was not a partner of J. A. Fagerberg during the time mentioned in the pleadings, then I instruct you that the defendants in this action cannot justify the levy on and seizure [353—335] made of the property described in the Amended Complaint, unless you find from the evidence that H. M. Fagerberg held himself out to be a partner or knowingly permitted himself to be held out as a partner of J. A. Fagerberg in said business, and that the Carstens Packing Company had knowledge of such holding out at the time J. A. Fagerberg contracted the indebtedness sued upon in the action in which the writ of attachment was issued, and that the consideration for said indebtedness *were* goods, wares and merchandise used and handled and traded in by said co-partnership.

A person who is not actually a partner, and who has no interest in the partnership, cannot, by reason of having held himself out to the world as a partner, be held liable as such on a contract made by the partnership with one who had no knowledge of the holding out.

With respect to the bill of sale executed by J. A. Fagerberg to H. M. Fagerberg on July 15, 1913 and recorded in the office of the United States Commissioner at Chitina on August 9, 1913, You are instructed that a transfer of property made by a person

who is insolvent or in failing condition or under circumstances making it important to him to conceal his assets is to be viewed with suspicion and a transfer made by him at such time, particularly to a near relative or person in close business association with him, is presumptively fraudulent.

In this case, if you find from the evidence that after the bill of sale was given by J. A. Fagerberg to H. M. Fagerberg on [354—336] July 15, 1913, no notice of the transfer was given by either party, further than to place it on record in the Commissioner's office at Chitina, and that the said parties continued to conduct business as they had done before, that there was no apparent change of possession of any of the property and all the relations between the said parties and the conditions surrounding their business and management of the property continued as before, you will be justified in finding that whatever relationship existed between the said parties in their business prior to that date, continued to exist.

The Alaska Code provides as follows:

“All deeds of gifts, all conveyances and transfers or assignments, verbal or written, of goods or chattels of things in action made in trust for the person making the same, shall be void as against the creditors existing.”

Circumstances attending fraudulent transfers made to defeat creditors are sometimes said to carry on their face badges of fraud. These badges of fraud do not in themselves constitute fraud, but they are signs or indications upon which its existence may be properly inferred as a

matter of evidence. They are more or less strong or weak according to their own nature and the number concurring in the case. They are as infinite in number and form as are the resources and versatility of human artifice.

20 Cyc. 440.

If a transfer is made by a debtor in suspicion of a suit against him or after a suit has begun and while it is pending against him, this is a badge of fraud. Secrecy is a badge of fraud and so is undue or unusual haste. Evidence of large indebtedness or complete insolvency is an important element in marshalling badges of fraud to overturn fraudulent transfers. The transfer of all or nearly all of his property as a debtor, especially when he is insolvent or greatly embarrassed financially, is a badge of fraud. The unexplained retention or possession [355—337] by the grantor of property transferred is a badge of fraud.

“He who alleges fraud must prove it. It is never presumed. The law does presume, in the absence of evidence to the contrary, that the business transactions of every man are done in good faith, and for an honest purpose, and anyone who alleges that such acts are done in bad faith and for a dishonest purpose takes upon himself the business of showing the same.”

And in this case I instruct you that if fraud is alleged by the defendants in this case, they must establish the alleged fraud to your satisfaction as tested by the foregoing rule before you can find that the transfer from J. A. Fagerberg to H. M. Fagerberg

of the property described in the bill of sale of July 15, 1913, was fraudulently made, or made with a fraudulent intent.

While as just stated, fraud must be proved by the one alleging it, yet this rule is qualified by the further rule of law that certain acts on the part of one making a deed or transfer of his property as above explained to you, constitute what are called badges or evidences of fraud, and when these evidences are sufficiently strong to raise a presumption of fraud, the burden of proof shifts, and the one against whom the fraud is alleged must meet and overcome this presumption of fraud.

You are instructed that if you believe from the evidence that the plaintiff H. M. Fagerberg, and his brother, J. A. Fagerberg, were at the time of the attachment in this case, copartners, [356—338] doing business under the firm name of Fagerberg Brothers, and were, as such, the owners of the property attached, then the plaintiff cannot recover and your verdict must be in favor of the defendants.

If, however, you believe from the evidence and by a preponderance thereof, that said property was solely owned by the plaintiff, H. M. Fagerberg, then your verdict should be for the plaintiff and against the defendants, and you should consider what, if any, damages the plaintiff sustained by reason of the wrongful taking of his property and the withholding thereof.

If you shall find for the plaintiff from a preponderance of the evidence, it will then be your duty to consider the question of damages and in this respect

you are instructed that the measure of damages is the value of the use of the property during the time it was wrongfully withheld from the plaintiff, if you find it was so wrongfully withheld.

You have heard the testimony of the plaintiff as to the value of the use of the roadhouse and the five head of horses attached and from this you will endeavor to ascertain the reasonable amount of damages, if you so find at all.

Damages may not be estimated by mere guesswork or conjecture, but must be based upon substantial facts and evidence justifying the same. Remote or speculative damages and future profits are not to be considered, except in so far as they are reasonably deduced from the testimony, tending to prove actual damages to the plaintiff, flowing from the wrongful attachment and the withholding of plaintiff's property. [357—339]

You are instructed that you are the sole judges of the credibility of the witnesses and of the effect and value of the evidence, but your power of judging the effect of evidence is not arbitrary, but to be exercised with legal discretion and in subordination to the rules of evidence.

You are further instructed that you are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number, or against a presumption or other evidence satisfying your minds.

You are instructed that a witness willfully false in one part of his testimony may be distrusted in others.

You are instructed that the oral admissions of a party are to be viewed with caution, for the reason that one may misunderstand what is intended to be said or place a wrong construction upon what is claimed to be an oral admission.

You are instructed that the one having the affirmative of an issue, in this case the plaintiff, has the burden upon him of proving his case by a preponderance of the evidence. In a criminal case the charge must be proven beyond a reasonable doubt, but in a civil case the one having the burden is required only to prove it by a preponderance of the evidence; this means that where the scales are about evenly balanced and you are unable to determine which may be in the right, you will resolve such doubt against the one having the affirmative of the proposition. [358—340]

In determining the credit you will give a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness on the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to or feeling for or against the defendant; the probability or improbability of the statements of the witness; the opportunity he had to observe and to be informed as to the matters respecting which he gave testimony before you; and the inclination he evinces, in your judgment, to speak the truth or otherwise, as to the matters within the knowledge of such witness.

You are instructed that you should not consider any evidence sought to be introduced but excluded by

the Court, nor should you consider any evidence that has been stricken from the record by the Court, nor should you consider in reaching your verdict any knowledge or information known to you, not derived from the evidence as given by the witnesses upon the witness stand.

You should not allow prejudice or sympathy to swerve you in reaching a verdict according to the evidence and the law as given to you by the Court. Whatever is warranted under the evidence and the instructions of the Court, you should return, as you have sworn to do.

You are instructed that evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce [359—341] and of the other to contradict; and, therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party to produce, the evidence should be viewed with distrust.

You are instructed that in considering the evidence in this case you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses, when their evidence does not produce conviction in your minds, against a lesser number of witnesses, or a presumption, or other evidence which is satisfying to your minds. The weight of the evidence does not depend so much upon the number of witnesses who testify as upon the character and probability of the facts stated by them, and upon the character and reasonableness of their testi-

mony, and the opportunity the witnesses had for seeing and knowing the facts stated by them.

It is your duty to give to the testimony of each and all of the witnesses such credit as you consider their testimony justly entitled to receive; and in doing so you should not regard the remarks or expressions of counsel, unless the same are in conformity with the facts proved, or are reasonably deductable from such facts and the law as given to you in these instructions.

Two forms of verdict are herewith submitted to you as follows:

We, the jury, duly empaneled and sworn to try the above-entitled cause, find that the plaintiff is the owner of all [360—342] of the property described in his amended complaint, and was on the 6th day of August, 1914, and ever since has been and now is entitled to the possession of all of said property; and that he is now entitled to the return of said property from said defendants and each of them. And we find the value of the log buildings used as a hotel or roadhouse at Blackburn, Alaska, together with the two storehouses adjoining said roadhouse or hotel, all of which is described in the complaint, to be the sum of —— dollars; the value of the tents, barns and blacksmith-shop described in said complaint to be the sum of —— dollars; the value of the horses described in said complaint to be the sum of —— dollars; the value of all other personal property mentioned in said complaint and particularly described in the schedule attached thereto to be the sum of —— dollars. And in case that the delivery of said

property, or any part thereof, cannot be made to the plaintiff, we find that plaintiff is entitled to a judgment against said defendants and each of them for the value of such portion of the property as heretofore assessed as cannot be returned.

We further find that plaintiff has been damaged by reason of the wrongful taking and detention of said property by the defendants and assess his damages at the sum of ——— dollars.

Dated at Valdez, Alaska, this 13th day of May, 1915. Should you find this verdict, you will insert in each of the blank places here, the amounts which you find to be proper.

The second general verdict is a verdict as follows:

We, the jury, duly empaneled and sworn in the above-entitled [361—343] cause do find for the defendants on all the issues.

That is a general verdict in favor of the defendants.

There are also submitted to you three special questions of findings, and you will answer the first two of said questions yes or no, and the third question answer as you may find. The questions are:

1. Was H. M. Fagerberg on the 6th day of August, 1914, the sole and lawful owner of the property described in the amended complaint, that is, the Blackburn roadhouse, furniture and equipment, the barns and outbuildings, and the horses, harnesses, sleds, etc., as set forth in Plaintiff's Exhibit "A," attached to the amended complaint?

2. Was there a partnership existing between H. M. Fagerberg and J. A. Fagerberg at any time previ-

ous to the 6th day of August, 1914?

3. Should you find that there was such a partnership, state when it begun and when it terminated.

These verdicts you will take with you to your jury-room and when you have unanimously agreed upon a verdict and upon the answers to these questions, you will sign the verdict which you find by your foreman, and return the same into court. The instructions you will also take with you to your jury-room, for your guidance and also the exhibits in the case.
[362—344]

[Exceptions to Refusal of Court to Give Certain Instructions.]

Mr. RITCHIE.—The defendants desire to except to the refusal of the Court to give that part of Instruction Number 5 asked by the defendants which is indicated by a pencil bracket in the margin. I am not sure that that is covered—it is probably partly covered by another, but not fully covered and in order to save the point I wish to except at this time.

Defendants also desire to except to the refusal of the Court to give Instruction Number 6 requested by defendants.

Exception allowed in each case.

The part of Instruction Number 5 referred to by counsel is as follows:

“You are instructed that possession of property is presumptive evidence of ownership, until the basis of ownership is otherwise explained, and long continuance in possession strengthens the presumption of ownership.

In this case if you find that the Blackburn

roadhouse and equipment had been in possession of J. A. Fagerberg most of the time since it was constructed, and that H. M. Fagerberg never had charge of it for a considerable length of time, you are entitled to consider the facts regarding possession as making a prima facie case of ownership in J. A. Fagerberg.” [363—352]

**[Stenographer's Certificate to Transcript of
Evidence and Proceedings.]**

I do hereby certify that I am the official court stenographer of the Third Judicial Division, Territory of Alaska; that as such I reported the proceedings had in the trial of the above-entitled cause, to wit, H. M. Fagerberg vs. F. R. Brenneman, U. S. Marshal, et al.; that the above is a full, true and correct transcript of the evidence produced and proceedings had at said trial.

Dated at Valdez, Alaska, this — day of —, 1915.

————— [364]

**[Plaintiff's Exhibit "F"—Complaint (Carstens
Packing Co. vs. J. A. Fagerberg).]**

*In the District Court for the Territory of Alaska,
Third Division.*

No. 682.

CARSTENS PACKING COMPANY, a Corporation,
Plaintiff,

vs.

J. A. FAGERBERG,

Defendant.

For his first cause of action against defendant plaintiff says:

I.

Plaintiff is a corporation, duly organized under the laws of the State of Washington, and doing business in the Territory of Alaska, and was such corporation at all times hereinafter mentioned.

II.

That on the 3d day of July, 1914, the Superior Court of King County, State of Washington, was a court of general jurisdiction, duly created and organized by the laws of the said State.

III.

That on the — day of February, 1913, plaintiff commenced an action in said Superior Court of King County, State of Washington, against the defendant herein by due service of process upon him according to the laws of said State. That such process was duly and personally served upon said defendant within the jurisdiction of said Superior Court. That thereafter, to wit, on the 23d day of March, 1913, the default of said defendant for pleading, or appearance in said action was duly entered in said court. That thereafter, such proceedings were had in said cause that on the 3d day of July, 1914, judgment for the sum of [365] Twenty-six Hundred Fifty-one and 72/100 Dollars (\$2651.72) was duly given and entered by said Court in favor of the plaintiff and against the defendant; that said judgment draws interest from its date at the rate of six per cent (6%) per annum until paid.

IV.

That no part of said judgment has been paid and the whole sum is now due and payable.

For a second cause of action against defendant plaintiff says:

I.

Plaintiff is a corporation, duly organized under the laws of the State of Washington, and doing business in the Territory of Alaska, and was such corporation at all times hereinafter mentioned.

II.

That between the 10th day of March, 1914, and the 12th day of June, 1914, the plaintiff sold and delivered to the defendant goods, wares and merchandise at the agreed price and of the agreed value of Forty-one Hundred Seventy and 97/100 Dollars (\$4,170.97).

III.

That no part of said sum has been paid except the sum of One Hundred Forty-eight and 22/100 Dollars (\$148.22).

IV.

That there is now due and owing to plaintiff from defendant on said account, the sum of Four Thousand Twenty-two and 75/100 Dollars (\$4,022.75), with interest thereon at the legal rate from June 12, 1914.

WHEREFORE, plaintiff asks judgment against defendant for the sum of Twenty-six Hundred Sixty-three and 66/100 Dollars (\$2,663.66) on its first cause of action and for the sum of Four Thousand Sixty-five and 66/100 Dollars on its second

cause of action, a total of Six Thousand Seven Hundred Twenty-nine and 32/100 Dollars [366] (\$6,729.32), with interest on said separate sums as hereinbefore stated and for the costs of this action.

C. E. BUNNELL,
JOHN LYONS and
E. E. RITCHIE,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

E. E. Ritchie, being first duly sworn, deposes and says that he is attorney for plaintiff in this action; that he makes this verification in behalf of the plaintiff for the reason that plaintiff is a foreign corporation with its principal officers nonresidents of the Territory of Alaska, and now absent therefrom; that he has read the foregoing Complaint and believes the same to be true.

E. E. RITCHIE.

Subscribed and sworn to before me this 31st day of July, A. D. 1914.

[Seal]

THOS. P. GERAGHTY,
Notary Public for Alaska.

My commission expires Feb. 15, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jul. 31, 1914. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [367]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAS. M. MILLSAP, Deputy United States
Marshal,

Defendants.

Verdict.

We, the jury, duly empaneled and sworn to try the above-entitled cause, find that the plaintiff is the owner of all of the property described in his amended complaint, and was on the 6th day of August, 1914, and ever since has been and now is entitled to the possession of all of said property; and that he is now entitled to the return of said property from said defendants and each of them. And we find the value of the log buildings used as a hotel or roadhouse at Blackburn, Alaska, together with the two storehouses adjoining said roadhouse or hotel, all of which is described in the complaint, to be the sum of Two Thousand (\$2,000) Dollars; the value of the tents, barns and blacksmith-shop described in said complaint to be the sum of One Thousand (\$1,000) Dollars; the value of the horses described in said complaint to be the sum of One Thousand (\$1,000) Dollars; the value of all other personal property men-

tioned in said complaint and particularly described in the schedule attached thereto to be the sum of One Thousand (\$1,000) Dollars. And in case that the delivery of said property or any part thereof cannot be made to the plaintiff we find that plaintiff is entitled to a judgment against said defendants and each of them for the value of such portions of the property as heretofore [368] assessed as cannot be returned.

We further find that plaintiff has been damaged by reason of the wrongful taking and detention of said property by the defendants, and assess his damages at the sum of Four Thousand Seven Hundred Twenty-five Dollars (\$4,725).

Dated at Valdez, Alaska, this 13th day of May, 1915.

GEORGE LACY,
Foreman.

[Endorsed as follows]: Filed in the District Court, Territory of Alaska, Third Division. May 13, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 128. [369]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAS. M. MILLSAP, Deputy United States
Marshal,

Defendants.

Special Findings Requested by Plaintiff and Defendants.

I.

Was H. M. Fagerberg on the 6th day of August, 1914, the sole and lawful owner of the property described in the amended complaint, that is, the Blackburn roadhouse, furniture and equipment, the barns and outbuildings, and the horses, harnesses, sleds, etc., as set forth in Plaintiff's Exhibit "A," attached to the amended complaint?

He was.

II.

Was there a partnership existing between H. M. Fagerberg and J. A. Fagerberg at any time previous to the 6th day of August, 1914?

There was not.

III.

Should you find that there was such a partnership, state when it began and when it terminated. [370]

Dated at Valdez, Alaska, this 13 day of May, 1915.

GEORGE LACY,
Foreman.

[Endorsements]: Filed in the District Court, Territory of Alaska, Third Division. May 13, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 129. [371]

*In the District Court for the Territory of Alaska,
Third Division.*

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAS. M. MILLSAP, Deputy United States
Marshal,

Defendants.

Motion for New Trial.

Now come the defendants by their attorneys, Lyons & Ritchie, and move the Court for an order setting aside the verdict and special findings returned by the jury in this cause, and to grant a new trial of the action upon the following grounds:

I.

That the valuation of the property fixed by the jury and the allowance of damages on account of the attachment complained of herein, made by the jury, are excessive; appearing to have been given under the influence of passion and prejudice.

II.

That the evidence adduced in the trial was wholly insufficient to justify the verdict and findings and that said verdict and findings are against law.

III.

Errors in law occurring at the trial and excepted to by the defendants at the time as follows:

A. The Court erred in admitting the testimony of H. M. Fagerberg, over the objection of defend-

ants, as to the probable profit he might have made by operating the Blackburn roadhouse and by use of the horses claimed by him, for the reason that all the testimony offered referred wholly to speculative profits, based upon evidence and opinions of said H. M. Fagerberg as to probable business, and none of it offered [372] specific facts and figures, showing assured business taken away from plaintiff by reason of said attachment.

Further, all such testimony was incompetent, irrelevant and immaterial for the reason that the testimony offered by plaintiff himself shows that prior to the attachment, he was working for J. A. Fagerberg for a salary of \$100.00 per month and had all the property, now claimed by him, leased to said J. A. Fagerberg for an indefinite period, as shown by the written contract introduced in evidence by plaintiff, and, therefore, the attachment did not interfere with or break off any business whatsoever that he was engaged in on his own account and all of the evidence offered by plaintiff was intended to show damages and destruction of his own personal business.

Further, plaintiff failed to show by any evidence that either the freighting or roadhouse business done by J. A. Fagerberg prior to the attachment or in prospect after the time of the attachment, was sufficient to enable him to pay to plaintiff any part of any of the sums called for by the lease from plaintiff to J. A. Fagerberg, and plaintiff admitted that up to the time of the attachment, he had received nothing on account of said lease, except his personal expenses.

B. The Court erred in refusing to give to the jury instruction No. 5, asked by defendants, as follows:

“You are instructed that possession of property is presumptive evidence of ownership, until the basis of ownership is otherwise explained, and long continuance in possession strengthens the presumption of ownership.

In this case if you find that the Blackburn roadhouse and equipment had been in possession of J. A. Fagerberg most of the time since it was constructed, and that H. M. Fagerberg never had charge of it for a considerable length of time you are entitled to consider the facts regarding possession as making a *prima facie* case of ownership in J. A. Fagerberg.”

C. The Court erred in refusing to give to the jury instruction No. 6 asked by defendants, as follows:

“You are instructed that in seizing the property attached by him in the case in which the writ complained of was issued, the marshal and his deputy were merely discharging their duty to serve process in their hands; that said [373] writ directed them to seize sufficient property to secure the possible judgment and costs that might be recovered in the case, with a reasonable allowance for depreciation in value incident to the seizure and sale.

The marshal had also a right to seize any property in which H. M. Fagerberg had an interest.”

LYONS & RITCHIE,
Attorneys for Defendants.

Service of copy admitted this 17th day of May, 1915.

DONOHOE & DIMOND,
Attorneys for Plaintiff.
By ANTHONY J. DIMOND.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 17, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [374]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAS. M. MILLSAP, Deputy United States
Marshal.

Order Denying Motion for New Trial.

The motion of defendants for a new trial in the above-entitled cause came on regularly for hearing this 19th day of May, 1915, the plaintiff being represented by his attorneys, Donohoe & Dimond, and the defendants by their attorneys, Lyons & Ritchie, and the Court after hearing the said motion, and the arguments of counsel, for the respective parties, and being fully advised in the premises, announced that in the opinion of the Court, the damages fixed by the jury in the verdict of four thousand seven hundred and twenty-five dollars for the wrongful taking and detention of the property described in plain-

tiff's amended complaint were excessive, and that in the opinion of the Court the sum of three thousand dollars would be just and equitable as such damages, whereupon, plaintiff announced in open court that he was willing to accept the said sum of three thousand dollars as such damages.

NOW, THEREFORE, IT IS ORDERED, that said motion for a new trial be and the same is hereby denied; and it is further ordered that the verdict of the jury as to damages for the wrongful taking and detention of the property described in the amended complaint in this action, be and the same is hereby modified by reducing the amount thereof from four thousand seven hundred twenty-five dollars to the sum of three thousand dollars, and that judgment be entered for plaintiff and against defendants and each of them accordingly. To which order of the Court the defendants then and there excepted. [375]

Done in open court at Valdez, Alaska, this 19th day of May, 1915.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 20, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, Page No. 138. [376]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAS. M. MILLSAP, Deputy United States
Marshal,

Defendants.

Judgment.

This action came on regularly for trial, plaintiff appearing in person and by his attorneys, Donohoe & Dimond, and the defendants appearing by their attorneys, Lyons & Ritchie, a jury of twelve persons was duly and regularly empaneled and sworn to try said action. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing all the evidence, the arguments of counsel and the instructions of the Court, the jury retired to consider of their verdict, and subsequently on the 13th day of May, 1915, returned into court with the verdict signed by the foreman, and after being called, answered to their names and said:

“We, the jury, duly empaneled and sworn to try the above-entitled cause, find that the plaintiff is the owner of all the property described in his amended complaint, and was on the 6th day of August, 1914, and ever since has been and now is entitled to the possession of all said property; and that he is now entitled to the return of said property from said

defendants and each of them. And we find the value of the log buildings used as a hotel or roadhouse at Blackburn, Alaska, together with the two storehouses adjoining said roadhouse or hotel, all of which is described in the complaint, to be the sum of Two Thousand (\$2,000) Dollars; the value of the tents, barns and blacksmith-shop described in said complaint to be the sum of One Thousand (\$1,000) Dollars; the value of the horses described in said complaint to be the sum of One Thousand (\$1,000) [377] Dollars; the value of all other personal property mentioned in said complaint and particularly described in the schedule attached thereto to be the sum of One Thousand (\$1,000) Dollars. And in case that the delivery of said property or any part thereof cannot be made to the plaintiff, we find that plaintiff is entitled to a judgment against said defendants and each of them for the value of such portion of the property as heretofore assessed as cannot be returned.

We further find that plaintiff has been damaged by reason of the wrongful taking and detention of said property by the defendants, and assess his damages at the sum of Four Thousand Seven Hundred Twenty-five (\$4,725) Dollars.

Dated at Valdez, Alaska, this 13th day of May, 1915.

GEORGE LACY,
Foreman."

And thereafter the defendants filed herein a motion for a new trial, which came on regularly for hearing on the 19th day of May, 1915, and the Court,

with the consent of the plaintiff, having reduced the damages given by the jury in said verdict from four thousand seven hundred twenty-five dollars to the sum of three thousand dollars, and thereupon the Court by order duly made and entered denied said motion for a new trial.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid it is ORDERED, ADJUDGED and DECREED, that the plaintiff is the lawful owner and entitled to the immediate possession of the following described property: That certain roadhouse, together with the appurtenances, the land about said roadhouse and upon which said roadhouse is situate, being two acres, more or less, all furniture and equipment in said roadhouse, and all barns and outbuildings in connection therewith, the said property being situate at what is known as the Town of Blackburn, Alaska, at mile 192 of the Copper River and Northwestern Railway, within the Third Division of the Territory of Alaska, the said property and premises being commonly known as the "Blackburn Roadhouse"; also, five head of horses, and harnesses, saddles, sleds, wagon and general equipment, the said property being described more particularly and in detail as follows: [378]

2 acres of land, more or less, of land on which roadhouse stands.

One log building—Roadhouse.

1—34x32L—2 floors and attic.

1—20x40—Main building—2 floors and attic.

1 storeroom joining on North side, 19x30.

1 storeroom joining on South, 18x30.

Tents, barns, etc.:

- 1—16x29—10oz. tent.
- 1—13x22 log cabin, blacksmith-shop.
- 1—37x47 stable, logs.
- 1—15x18, approximately, log barn.
- 1—cache tent, 16x32, with floor.

Furniture, Hotel Lobby:

- 2 window-shades.
- 4 straight-back chairs.
- 2 Morris chairs.
- 1 oak rocker.
- 1 air-tight heater.
- 1 water-cooler.
- 1 oak settee.
- 1 oak Morris chair.
- 1 oak library chair.
- 1 fire-extinguisher.

Hallway:

- 1 16x18 linoleum.
- 1 foot rug.
- 1 window-shade.
- 3 straight-back chairs.
- 1 fire-extinguisher.
- 1 wall lamp.

Linen Closet:

- 21 sheets.
- 4 roller towels.
- 8 bath towels.
- 3 bed spreads.
- 23 face towels.
- 15 pillow cases.

Dining-room :

- 3 fire-extinguishers.
- 1 20-inch Empire heater.
- 1 large dining-room table.
- 4 yds. oilcloth on table.
- 4 pair window curtains.
- 1 pitcher.
- 8 oil and vinegar cruets.
- 2 toothpick-holders.
- 1 berry glass dish.
- 13 dining-room chairs.
- 18x22 oilcloth.
- 1 small dining-table.
- 1 table-cover.
- 2 window-shades.
- Telephone.
- 2 sugar-bowls.
- 1 salt-and-pepper shaker.

Kitchen :

- 13 China cups.
- 4 syrup pitchers.
- 2 gravy dishes.
- 2 berry dishes.
- 7 pickle dishes.
- 5 mixing pans.
- 2 granite pitchers.
- 2 large wash-basins.
- 18 dinner plates.
- 6 small platters.
- 11 vegetable dishes.
- 10 dessert plates.
- 16 Roger Bros. knives.

- 7 tablespoons.
- 2 butter knives.
- 1 range.
- 2 large coffee-pots.
- 1 double boiler.
- 3 bake pans.
- 1 tea-kettle.
- 2 cake cutters.
- 1—2-gallon ice-cream freezer.
- 1 waffle-iron.
- 1 broom.
- 1 dustpan.
- 3 kitchen tables.
- 1 wall sideboard.
- 1 kitchen cupboard.
- 1 egg-beater.
- 1 corkscrew.
- 1 potato-reeder.
- 1 can-opener.
- 22 saucers.
- 4 granite saucers.
- 16 water glasses.
- 2 large syrup pitchers.
- 18 granite mixing-pans, various sizes.
- 6 granite soup bowls.
- 1 basin strainer.
- 3 vegetable mashers.
- 7 large platters.
- 12 butter dishes. [379]
- 15 soup plates.
- 21 soup spoons.
- 13 teaspoons.

- 18 forks.
- 2 large stock-pots.
- 3 skillets.
- 1 toaster.
- 1 large fork.
- 1 small dish-pan.
- 1 pr. tin snips.
- 1 pancake turner.
- 1 steel.
- 1 poker.
- 1 roller towel.
- 1 clawhammer.
- 2 window-shades.
- 2 dish towels.
- 24 water glasses.
- 1 milk pitcher.
- 1 glass pitcher.
- 1 spoonholder.
- 1 wash-basin.
- 8 mush bowls.
- 3 olive dishes.
- 3 sugar spoons.
- 1 skimmer.
- 1 small strainer.

Pantry:

- 1—24-in. bread pan and cover.
- 1—1-gal. earthen bean-baker.
- 1—3-gal. crock.
- 1 granite iron ladle.
- 1—1-gal. vegetable strainer.
- 6 bake pans.
- 10 biscuit and cake cutters.

- 6 cake tins.
- 18 pie tins.
- 1 muffin pan.
- 1 corn popper.
- 2 milk strainers.
- 1 meat chopper.
- 5 bit cleavers.
- 1 wall lamp.
- 1 window-shade.
- 2 mixing tables.
- 1 cupboard.

Cook Room:

- 4 Rochester lamps.
- 1 bracket lamp.
- 2 new brooms.
- 1 window-shade.
- 1 folding cot.
- 2 prs. cotton blankets.
- 1 sheet.
- 1 chair.
- 2 water-pitchers.
- 1 tea-pot.
- 1 toothpick-holder.
- 3 flour sifters.
- 1 serving tray.
- 8 toothpick-holders.
- 6 salt-and-pepper shakers.
- 1 set red portieres.
- 1—5x7 linoleum.

Room No. 1:

- 1 iron bed and spring and mattress.
- 2 sheets.

- 1 four-pound blanket.
- 1 quilt.
- 1 bedspread.
- 1 pillow.
- 1 foot rug.
- 1 slop-bucket and cover.
- 1 wash-bowl and pitcher.
- 1 soap dish.
- 1 glass.
- 1 looking-glass.
- 1 portiere and 1 rug.

Room No. 2:

- $\frac{3}{4}$ spring mattress.
- 1—6-lb. gray blanket.
- 1 quilt, 1 bedspread, 2 pillows.
- 1 foot rug, 1 bedspread, 1 slop-bucket and cover.
- 1 wash-bowl, 1 chair, glass, 1 water-pitcher.
- 1 towel, 1 soap dish, 1 candlestick, 1 looking-glass.
- 1 window-shade.

Room No. 3:

- 1— $\frac{3}{4}$ mattress, spring and bedstead, 2 sheets,
- 1—4-lb. blanket, quilt, spread, 1 chair, 1 pillow,
- 1 table, 1 carpet, 1 slop-jar, 1 bowl, 1 soap dish,
- 1 candlestick, 1 looking-glass, 1 window-shade,
- 2 towels, washstand, 1 blanket, 1 quilt, 1 pr. curtains,
- 1 window-shade, 1 towel.

Room No. 4:

- 2 quilts, 1 pr. blankets, 2 pillows, 2 pillow-cases,
- 2 sheets, 1— $\frac{3}{4}$ mattress, 1 spread, 1— $\frac{3}{4}$ bed and
- spring, 1 slop-bucket and cover, 1 wash-bowl,
- 1 water pitcher, 3 towels, 1 table, 1 carpet rug,
- 1 chair, 1 looking-glass, 2 window-shades, 1 pr.

curtains, 1 granite soap dish, 1 water glass, 1 candlestick. [380]

Room 5:

1 single iron bed and spring, 1 mattress, 2 sheets, 1 blanket, 1 quilt, 1 spread, 1 pillow, 1 foot rug, 1 slop-bucket and cover, 1 stand, wash-bowl and pitcher, 1 candlestick, 1 soap dish, 2 window-shades, 1 pr. curtains and rod, 2 towels, 1 looking-glass, 1 chair.

Room 6:

1— $\frac{3}{4}$ bed, spring and mattress, 2 sheets, 1 blanket, 1 quilt, 1 spread, 1 pillow and case, 1 foot rug, 1 slop-bucket and cover, 1 stand, 1 pitcher and bowl, 1 soap dish, 1 candlestick, 1 looking-glass, 3 towels, 1 window-shade, 1 chair.

Room No. 7:

1— $\frac{3}{4}$ bed and spring and mattress, 2 sheets, 1 blanket, 1 quilt, 1 spread, 2 pillows, 1 foot rug, 1 slop-bucket and cover, 1 chamber, 1 wash-bowl and pitcher, 1 soap dish, 1 candlestick, 1 glass, 1 looking-glass, 3 towels, 1 window-shade, 1 chair, 1 washstand.

Room No. 8:

1 single iron bed and spring, 1 mattress, 2 sheets, 1 pillow, 1 blanket, 1 quilt, 1 spread, 1 foot rug, 1 slop-bucket, 1 washstand, 1 pitcher and bowl, 1 soap dish, 1 candlestick, 1 looking-glass, 2 towels, 1 window-shade, 1 chair.

Room No. 9:

1 iron bed and spring, 1 mattress, 2 sheets, 1 blanket, 1 quilt, 1 spread, 2 pillows, 1 rug, 1 washstand, 1 slop-bucket and cover, 1 wash-bowl

and pitcher, 1 soap dish, 1 candlestick, 1 curtain, 1 looking-glass, 1 writing table and cover, 1 towel, 1 pr. window curtains, 1 shade, 2 chairs.

Room No. 10:

1— $\frac{3}{4}$ iron bed and spring, 1 mattress, 1 blanket, 1—3-lb. blanket, 3 pillows, 1 quilt, 1 rug, 1 washstand, 1 pitcher, 1 bowl, 1 slop-bucket, 1 water-pitcher and glass, 1 soap dish, 4 towels, 1 candlestick, 1 looking-glass, 1 pr. curtains, 1 window-shade, 1 chair.

Room No. 11:

1 folding cot and spring, 1 mattress, 2 sheets, 1 spread, 1 blanket, 1—10-lb. blanket, 1 pillow, 1 window-shade, 1 window curtain, 1 slop-bucket, 1 pitcher and bowl, 1 soap dish, 1 water-pitcher, 1 looking-glass, 1 brussels carpet-sweeper, 1 broom, 1 chair, linoleum.

Room No. 14:

1— $\frac{3}{4}$ iron bed and spring, 1 mattress, 2 sheets, 1 quilt, 1 spread, 2 pillows, rug, 1 chair, 6 towels, 1 chiffonier glass, 1 washstand, 1 slop-bucket and cover, 1 pitcher, 1 bowl, 1 water glass, 1 window-shade, 1 lace curtain, 1 chair.

Room No. 12:

1— $\frac{3}{4}$ iron bed and mattress, 2 pillows and cases, 1 single blanket, 1 washstand, 1 slop-bucket and cover, 1 wash-bowl and pitcher, 1 toothbrush-holder, 2 window-shades, 1 dressing table with glass, 1 chiffonier, 1 chair, 1 ingrain carpet, 2 prs. curtains.

Room No. 15:

1 bookcase, 1 library table, 1 rocking chair, 1

chair, 1 tablet, 1 heating stove, 1 rug, 2 window-shades, 2 window curtains.

Main Hallway—Second Floor:

2 wall lamps and reflectors, 96 feet cocoa matting.

Front Attic:

4 single iron beds and springs, 3 mattresses, 3 wood bedsteads, [381] 12 mattresses, 3 springs, 5 quilts, 7 sheets, 5 light blankets, 6 pillows, 1 bucket, 1 dipper and wash-bowl, 1 soap dish, 1 towel, 2 window-shades.

Back Attic:

9 cotton blankets, 1 gray blanket, 1 blanket, 2 double mattresses, 2 single mattresses, 2 single iron beds and springs, 5 slop-buckets and covers, 4 pillows and pillow cases, 19 prs. new pillows.

Tent Cache:

5 sets horseshoes. 1 electric battery; 2 meat-saws, without blades; 1 coffee-mill, 4 kegs assorted horseshoes, 1 scythe and snathe, 2 dish-pans, 1 mop-bucket, 1 wash tub, 1 hand axe, 2 rakes, 1 hoe, 1 fire-extinguisher, 1 handsaw, 1 blacksmith hammer, 1 pr. nippers, 2 lanterns, 1 mop, 1 neverslip wrench, 2 water-buckets, 1 dipper, 1 stove brush.

Blacksmith-shop:

130 new horseshoes, various kinds and sizes; 22 feet binding chain, 3 singletrees, 1—2-inch auger, 6 bits, 2 jackplanes, 4 packsaddles, 1 hack saw, 1 filing set, hand saw, 1 vise, 2 four-pound hammers, 2 old double bit axes, 1 mattock, 1 single spreader, 12 feet one inch drill steel, 14 feet $\frac{5}{8}$ square iron, 6 feet $\frac{3}{4}$ round iron, 1

horse collar, 1—80-lb. anvil, 1 No. 6 blast forge, 2 blacksmith tongs, 3 horseshoe tongs, 2 handle punches, 2 cold iron cutters, 8 punches, 2 cold chisels, 1 nail puller, pole axe, 1—6-inch monkey-wrench, 2 neverslip wrenches, 3 horseshoe rasps, 1 leather punch, 1 kit harness tools, 1—12-inch grindstone, 1 soldering iron, 1 tin snips, 1—24-inch air-tight heater, 25 feet wire fence, 2 meat saws, no blade; harness snaps, 6; 1 Mitchell wagon, 1 chicken-house.

Upstairs in Barn:

1 Yukon stove, 36x22; 3 towels, 3 coffee pots, 1 granite saucepan, 7— $1\frac{1}{2}$ -gal. fruit jars, 1 granite syrup pitcher, 1 six-drawer oak desk and revolving chair, 1 whipstock, 1 steamer chair, 1 mattress, 1 quilt, 1 table, 1 lamp, 1 Miller lamp.

Hotel Warehouse:

1— $21\frac{1}{2}$ -lb. pole axe, 1 hand saw, 1—24-in. heater, shelving, 1 6-foot bottom locker.

Barn Loft:

5 No. 2 short handled shovels, 1 ten-pound rock hammer, 14 ft. one-inch drill steel, 1—14-lb. rock hammer, 12 mattox, 2—8-lb. drill-hammers, 1 drill-wrench, 1 sheet corrugated iron, 8x2; 2 pieces drill steel 12 feet long, 9 single harnesses, 1 set double harness, 5 single back bands, 9 collars for horses, 5 blindbridles.

Barn Downstairs:

2 riding saddles, 4 openwork bridles, without snaps, reins, 4 horse blankets, 5 pack saddles and Humboldts, 2 Humboldts, 17 saddle blankets, 2 sets heavy single harness, 1 set double harness

complete, 4 horse collars with sweat pads, 1 neck yoke, 1—2½-lb. axe, 1 singletree, 1 new pack tree, 1 pack saddle, 1 curry comb, 1 brush, 2 nose-bags, 5 chicken coops, 1—3½lb. pole axe, 1 5-in. horse syringe, 1 horse bucket, 4 set double harness.

Miscellaneous:

- 1 slicker, 2 No. 4 sleds, 1 double-ender without shafts, 1 cord wood, 2 coils insulated copper wire, 1 pr. old shafts, 3—4x4's, 14 feet long.

Horses:

- 1 horse, weight about 1600, color black, age 12 years, name "Nig."
- 1 Horse, weight about 1600, color brown, age 12 years, name "Tom."
- 1 Horse, weight about 1100, color brown, age 10 years, name "Brownie."
- 1 Horse, weight about 1300, color gray, age 10 years, name "Dicky."
- 1 Horse, weight about 1000, color bay, age 10 years, name "Lady." [382]

That the value of said property is as follows: The log building used as a hotel or roadhouse at Blackburn, Alaska, together with the storehouse adjoining said roadhouse, all of which is heretofore described, is of the value of two thousand dollars (\$2,000.00); the tents, barns and blacksmith-shop heretofore described are of the value of one thousand dollars (\$1,000.00); the five head of horses heretofore described are of the value of one thousand dollars (1,000.00); all of the other personal property heretofore described is of the value of one thousand dollars (\$1,000.00).

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendants immediately deliver to the plaintiff all of the above-described property, and in case the delivery of said property, or any part thereof, is not immediately made to the plaintiff, then that plaintiff do have and recover of and from said defendants and each of them the value of such portion or portions of said property, as heretofore set out, which is not delivered.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that plaintiff do have and recover of and from said defendants and each of them the sum of three thousand dollars (\$3,000.00), lawful money of the United States of America, as damages for the wrongful taking and detention of said property from plaintiff by the said defendants, with interest thereon at the rate of eight per centum per annum from date hereof until paid, together with plaintiff's costs and disbursements incurred in this action, in the sum of ——— dollars, (\$——), to be taxed by the clerk of this court and inserted in this judgment.

Let execution issue in accordance with this judgment.

Done in open court at Valdez, Alaska, this 21st day of May, A. D. 1915.

FRED M. BROWN,
Judge.

[Endorsements]: Filed in the District Court Territory of Alaska, Third Division. May 21, 1915. Arthur Lang, Clerk By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 139. [383]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs

F. R. BRENNEMAN, U. S. Marshal and JAMES M.
MILLSAP, Deputy U. S. Marshal,
Defendants.

**Minute Order Extending Time to Settle and Prepare
Bill of Exceptions and Staying Execution.**

On motion of defendants, it is ordered by the Court here that defendants be granted ninety days from this date in which to prepare and settle Bill of Exceptions herein, and

IT IS FURTHER ORDERED that execution on plaintiff's judgment be stayed during said period of ninety days.

February, 1915, term—June 22d—66th Court Day—Tuesday.

Entered Court Journal No. 9, page 169. [384]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs

F. R. BRENNEMAN, U. S. Marshal and JAMES M.
MILLSAP, Deputy U. S. Marshal,
Defendants.

Order Enlarging Time to Settle Bill of Exceptions.

It appearing to the Court that the clerk's office has been unable to complete the transcript of the record of this cause and owing to the press of other business will be unable to complete the same before the date fixed by previous order as the time within which to prepare and settle the bill of exceptions on appeal herein:

Now, therefore, on motion of Lyons & Ritchie, attorneys for defendants, for good cause shown it is ordered that the time for preparing and settling the bill of exceptions in this cause to be used on appeal or writ of error to the circuit court of appeals of the Ninth circuit, is hereby extended to and including the tenth day of October, 1915.

Done in open court at Valdez, Alaska, this 18 day of September, 1915.

FRED M. BROWN,
Judge.

[Endorsements]: Filed in the District Court. Territory of Alaska, Third Division. Sep. 13, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. Entered Court Journal No. 9, page No. 256. [385]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs

F. R. BRENNEMAN, U. S. Marshal and JAMES M.
MILLSAP, Deputy U. S. Marshal,

Defendants.

**Minute Order Extending Time to Settle and Prepare
Bill of Exceptions.**

On motion of Lyons & Ritchie, attorneys for the defendants, for good cause shown,

IT IS ORDERED that the time for filing and settling bill of exceptions on writ of error herein be and the same is hereby extended to and including October 15, 1915.

February, 1915, Term—October 8th—114th Court Day—Friday.

Entered Court Journal No. 9, page No. 332. [386]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Stipulation as to Record.

It is stipulated by the attorneys for plaintiff and defendants, respectively, that the following may be omitted from the record on appeal as made by the court reporter, to wit:

Plaintiff's Exhibit "J"; Defendants' Exhibit 4; the postscript to the letter of Thomas Carstens introduced in evidence as Plaintiff's Exhibit "K"; and that in lieu of the whole of Defendants' Exhibit 1, the following statement be substituted:

It is agreed that Defendants' Exhibit 1, consisting of eleven sheets of bills of goods sold, be abbreviated as follows:

It is admitted that each is on the following bill-head:

"J. A. FAGERBERG. H. M. FAGERBERG.

Nazina, _____

Fagerberg Bros.

General Merchandise

and

Mining Supplies

Nazina, Alaska."

All of said bills are dated in the month of August, 1911.

That they are receipted over signatures as follows:

1. H. M. F.
2. Fagerberg.
3. J. A. F.
4. H. M. Fagerberg.
5. J. A. Fagerberg.
6. Fagerberg.

7. Fagerberg.
8. Fagerberg.
9. Fagerberg. [387]
10. Fagerberg.
11. Fagerberg.

It is agreed that Plaintiff's Exhibit "G" consists of three promissory notes given by Victor Olson payable to J. A. Fagerberg, dated July 8, 1909, for the aggregate sum of \$719.20, due in 120 days, six months and one year respectively, and that this statement be incorporated in the bill of exceptions in lieu of said exhibit.

It is stipulated also that the following be omitted from the record.

The schedule of property in the amended complaint and the judgment.

The reporter's transcript of the colloquy between court and counsel as to the pleadings in the case being taken by the jury to the jury-room.

The instructions asked by plaintiff and the statement of exceptions by counsel for plaintiff to instructions refused and instructions given.

LYONS & RITCHIE,

Attorneys for Defendants and Plaintiffs in Error.

DONOHUE & DIMOND,

Attorneys for Plaintiff and Defendant in Error.

[Endorsement]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915. Arthur Lang, Clerk. By K. L. Monahan, Deputy.
[388]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Petition for Writ of Error.

Now come the defendants above named and state that on the 21st day of May, 1915, the above-named court entered judgment herein in favor of the above-named plaintiff and against these defendants, in which judgment and in the proceedings had prior thereto in the above-entitled cause, certain errors were committed to the prejudice of these defendants, all of which will more fully appear from the assignment of errors filed with this petition.

Wherefore, defendants pray that a writ of error may issue in their behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of and that a transcript of the record and proceedings with all things concerning the same duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And defendants further pray that an order may be made fixing the amount of a bond for a supersedeas in said cause.

Dated this 15 day of October, 1915.

LYONS & RITCHIE,
Attorneys for Defendants.

[Endorsement]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915, Arthur Lang, Clerk. By K. L. Monahan, Deputy.
[389]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Assignments of Error.

Now come the defendants and make the following assignments of error in the trial of this cause upon which they will rely in their prosecution of the writ of error herein:

I.

The Court erred in admitting in evidence, over the objection of defendants, Plaintiff's Exhibit "D," which purported to be a contract between Thomas Carstens and J. A. Fagerberg on the one part and H. M. Fagerberg on the other part; it being conceded by plaintiff and by his witness, J. A. Fagerberg, that said contract was signed only by J. A. Fagerberg

and H. M. Fagerberg, the name of Thomas Carstens being appended thereto by J. A. Fagerberg without his knowledge; the same purporting to be a contract for a partnership among said parties and ultimate incorporation.

II.

The Court erred in admitting the testimony of the plaintiff, H. M. Fagerberg, over the objection of defendants, as to speculative profits he might have made in conducting the Blackburn roadhouse and using the attached horses if the attachment had not been made.

The Court erred in admitting testimony of profits lost by reason of the attachment of the roadhouse and horses [390] after evidence had been offered by plaintiff himself designed to show that both the roadhouse and the horses had been leased for about five months prior to the first levy under the writ of attachment complained of and that during all of said time, he had been working for \$100 per month for J. A. Fagerberg under a contract for an indefinite period that was terminated by levy of the attachment.

III.

The Court erred in refusing to give part of instruction No. 5 asked by defendants as follows:

“You are instructed that possession of property is presumptive evidence of ownership, until the basis of ownership is otherwise explained, and long continuance in possession strengthens the presumption of ownership.

In this case if you find that the Blackburn

roadhouse and equipment had been in possession of J. A. Fagerberg most of the time since it was constructed, and that H. M. Fagerberg never had charge of it for a considerable length of time, you are entitled to consider the facts regarding possession as making a prima facie case of ownership in J. A. Fagerberg."

IV.

The Court erred in denying defendants' motion for a new trial.

V.

The Court erred in ordering the judgment entered in this cause in favor of plaintiff and against defendants.

Wherefore, the defendants, plaintiffs in error, pray that said judgment may be reversed, vacated and set aside and that the verdict and special findings returned by the jury herein on which said judgment was based, may be set aside and that said action be remanded to the district court for such further proceedings as may, in the premises, seem proper.

LYONS & RITCHIE,

Attorneys for Defendants and Plaintiffs in Error.

[Endorsement]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915. Arthur Lang, Clerk. By K. L. Monahan, Deputy.
[391]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

**Order Allowing Writ of Error and Fixing Super-
sedeas Bond.**

On this day came the defendants, F. R. Brenne-
man, United States Marshal, and James M. Millsap,
Deputy United States Marshal, by their attorneys
and filed herein and presented to the court their
petition praying for the allowance of a writ of error,
together with an assignment of errors to be urged by
them, praying also that a transcript of the record
and proceedings in said cause with all things con-
cerning the same, be sent to the United States Cir-
cuit Court of Appeals for the Ninth Circuit, and
further that the amount of bond for supersedeas in
said cause be fixed. On consideration whereof, the
court hereby allows the writ of error as prayed for.

It is further ordered that a bond in the sum of
Five Thousand Dollars (\$5,000), conditioned accord-
ing to law, be executed in behalf of the above-named
defendants with good and sufficient surety, to be ap-
proved by the undersigned judge, and that upon exe-
cution, filing and approval of such bond, said judg-

ment in this cause shall forthwith be superseded and all proceedings in this cause stayed until a final determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 15th day of October, 1915.

FRED M. BROWN,
Judge.

[Endorsed as follows]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915. Arthur Lang, Clerk. By K. L. Monahan, Deputy.

Entered Court Journal No. 9, page No. 356. [392]

*In the District Court for the Territory of Alaska,
Third Division.*

#687.

Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Writ of Error.

The President of the United States of America, to
the Judge of the District Court for the Terri-
tory of Alaska, Third Division, Greeting:

Because in the record and proceedings as also in
the rendition of the judgment upon a verdict which

is in the said district court before you between H. M. Fagerberg, plaintiff and defendant in error, and F. R. Brenneman, United States Marshal, and James M. Millsap, Deputy United States Marshal, defendants and plaintiffs in error, as by their assignments of error is made to appear, we being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your seal you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same in San Francisco in said circuit court on the 14th day of November, 1915, and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States and the Territory of Alaska should be done. [393]

WITNESS, the Hon. EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 15th day of October 1915.

[Seal]

ARTHUR LANG,
Clerk of the District Court for the Territory of
Alaska, Third Division.

Allowed by: FRED M. BROWN,
Presiding Judge of the District Court for the Terri-
tory of Alaska, Third Division.

Entered Court Journal No. 9, page No. 355. [394]

*In the District Court for the Territory of Alaska,
Third Division.*

Filed in the District Court, Territory of Alaska,
Third Division. Oct. 28, 1915. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal for the
Third Division of the Territory of Alaska,
and JAMES M. MILLSAP, Deputy United
States Marshal for the Third Division of the
Territory of Alaska,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, F. R. Brenneman, United States Marshal
for the Third Division of the Territory of Alaska,
and James M. Millsap, Deputy United States Mar-
shal for the Third Division of the Territory of
Alaska, as principals, and the American Surety Com-
pany of New York, as surety, are held and firmly
bound unto H. M. Fagerberg, plaintiff above-named,
in the sum of Five Thousand Dollars (\$5,000.00),
to be paid to the said H. M. Fagerberg, his heirs,
executors, administrators or assigns, to which pay-
ment well and truly to be made we bind ourselves,
our heirs, executors and administrators, jointly and
severally, by these presents.

Sealed with our seals, and dated this 18th day of
October, 1915.

WHEREAS, the above-named defendants, F. R. Brenneman, United States Marshal for the Third Division of the Territory of Alaska, and James M. Millsap, Deputy United States Marshal for the Third Division of the Territory of Alaska, have sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to reverse the judgment rendered against them in the above-entitled action by the District Court for the Territory of Alaska, Third Division, which judgment was so rendered and entered by said Court on the 21st day of May, 1915, [395] for the sum of Three Thousand Dollars (\$3,000.00) and costs, and for the return of certain property described in said judgment;

NOW, THEREFORE, the condition of the above obligation is such that if the above-named F. R. Brenneman, United States Marshal for the Third Division of the Territory of Alaska, and James M. Millsap, Deputy United States Marshal for the Third Division of the Territory of Alaska, shall prosecute said Writ to effect, and shall answer all costs and damages, if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the principals named herein have hereunto set their hands, and the surety named herein has hereunto set its hand and affixed

its corporate seal, this 18th day of October, A. D. 1915.

United States Marshal for the Third Division of the
Territory of Alaska.

Deputy U. S. Marshal for the Third Division of the
Territory of Alaska,

Principals.

AMERICAN SURETY COMPANY OF NEW
YORK,

By S. H. MELROSE,
Resident Vice-president, Seattle, Washington,
Surety.

[Seal] Attest: H. M. JONES,
Resident Asst. Secretary, Seattle, Washington.

State of Washington,
County of King,—ss.

On this 18th day of October, 1915, before me personally appeared S. H. Melrose and H. M. Jones, to me known to be the resident vice-president and resident asst. secretary of the corporation that executed the within and foregoing instrument, and they acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal, this 18th day of October, 1915.

[Seal]

THOMAS R. LYONS,

Notary Public for the State of Washington, Residing
at Seattle.

[Sixteen Cents Internal Revenue Stamps. Canceled 10/18/15. A. S. Co.] [396]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

[Endorsements]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915. Arthur Lang, Clerk. By K. L. Monahan, Deputy.

Entered Court Journal No. 9, page No. 356.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Citation.

United States of America,
Territory of Alaska,—ss.

The President of the United States to H. M. Fagerberg, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the

City of San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein F. R. Brenneman, United States Marshal, and James M. Millsap, Deputy United States Marshal, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Hon. EDWARD W. WHITE, Chief Justice of the United States, the 15th day of October, 1915.

FRED M. BROWN,
Judge.

Service of copy of this citation admitted this 15 day of October, 1915.

DONOHUE & DIMOND,
Attorneys for Plaintiffs in Error. [397]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

**Stipulation Specifying Contents of Bill of
Exceptions.**

It is hereby stipulated by counsel for the parties respectively in the above-entitled cause that the following shall constitute the Bill of Exceptions on writ of error to the Circuit Court of Appeals, to wit:

1. Amended Complaint.
2. Amended Answer.
3. Reply.
4. Transcript of Evidence and Instructions of the Court.
5. Exhibits not Incorporated in Reporter's Transcript, or Abbreviated or Omitted by Stipulation.
6. Defendants' Exceptions to Refusal to Give Instructions.
7. Verdict.
8. Special Findings.
9. Motion for New Trial.
10. Order Denying Motion for New Trial.
11. Judgment.
12. Minute Order Allowing Ninety Days from June 22, 1915, to Prepare and Settle Bill of Exceptions.
13. Order Extending to October 10, 1915, the Time for Preparing and Settling Bill of Exceptions.
14. Minute Order Extending to October 15, 1915, the Time for Preparing and Settling Bill of Exceptions.
15. Stipulation as to Record, Abbreviating Exhibits.

16. Petition for Writ of Error.
17. Assignments of Error.
18. Order Allowing Writ of Error.
19. Writ of Error.
20. Bond on Writ of Error.
21. Citation.
22. This Stipulation.
23. Order Allowing, Certifying and Settling Bill of Exceptions.
24. Stipulation as to Supersedeas Bond.

LYONS & RITCHIE,

Attorneys for Defendants and Plaintiffs in Error.

DONOHUE & DIMOND,

Attorneys for Plaintiff and Defendant in Error.

[Endorsement]: Filed in the District Court, Territory of Alaska, Third Division. Oct, 15, 1915. Arthur Lang, Clerk. By K. L. Monahan, Deputy.
[398]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

**Order Allowing, Certifying and Settling Bill of
Exceptions.**

It appearing to the Court that counsel for the defendants and plaintiff, respectively, have stipulated and agreed upon a proposed bill of exceptions to be used upon writ of error in this cause, and said proposed bill of exceptions having been delivered to the clerk of this Court, and it further appearing to the Court that said proposed bill of exceptions conforms to the truth and is in proper form.

It is ordered that said bill of exceptions be and the same is hereby approved, allowed and settled and ordered to be filed and made part of the record in this cause.

Done in open court this 15th day of October, 1915.

FRED M. BROWN,
Judge.

[Endorsements]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
Entered Court Journal No. 9, page No. 359. [399]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Stipulation as to Supersedeas Bond.

It is this day stipulated in open court, by counsel for the parties respectively, and the stipulation is approved by the Court, that the bond on writ of error already furnished by the defendants may remain in the files until the substitution of a bond drawn to meet the objections of the plaintiff herein is presented to the Court for approval.

And it is ordered by the Court that the defendants be given until November 1, 1915, to file such amended bond and that execution of the judgment herein be stayed until that date.

It is further ordered that upon the filing and approval of a new bond as hereinabove stated, the present bond may be withdrawn.

Done in open court, this 16th day of October, 1915.

FRED M. BROWN,

Judge.

Filed in the District Court, Territory of Alaska, Third Division. Oct. 16, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy.

Entered Court Journal No. 9, page No. 361. [400]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
Territory of Alaska,
Third Division,—ss.

I, Arthur Lang, clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the hereto annexed 401 pages, numbered from 1 to 401, inclusive, are a full, true and correct

transcript of the records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that the same is made in accordance with the stipulation of counsel for the parties, respectively.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and the cost thereof, amounting to \$24.30, was paid to me by Messrs. Lyons & Ritchie, attorneys for the defendants, and plaintiffs in error herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court at Valdez, Alaska, this 15th day of October, A. D. 1915.

ARTHUR LANG,

Clerk of the District Court for the Territory of
Alaska, Third Division.

By K. L. Monahan,

Deputy. [401]

[Endorsed]: No. 2679. United States Circuit Court of Appeals for the Ninth Circuit. F. R. Brenneman, United States Marshal, and James M. Millsap, Deputy United States Marshal, Plaintiffs in Error, vs. H. M. Fagerberg, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed November 9, 1915.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

